

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -
XAVIER BECERRA, SECRETARY OF)
HEALTH AND HUMAN SERVICES, ET AL.,)
Petitioners,)
v.) No. 23-250
SAN CARLOS APACHE TRIBE,)
Respondent.)
- - - - -

XAVIER BECERRA, SECRETARY OF)
HEALTH AND HUMAN SERVICES, ET AL.,)
Petitioners,)
v.) No. 23-253
NORTHERN ARAPAHO TRIBE,)
Respondent.)
- - - - -

Pages: 1 through 106
Place: Washington, D.C.
Date: March 25, 2024

HERITAGE REPORTING CORPORATION

Official Reporters

1220 L Street, N.W., Suite 206

Washington, D.C. 20005

(202) 628-4888

www.hrcourtreporters.com

1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -
3 XAVIER BECERRA, SECRETARY OF)
4 HEALTH AND HUMAN SERVICES, ET AL.,)
5 Petitioners,)
6 v.) No. 23-250
7 SAN CARLOS APACHE TRIBE,)
8 Respondent.)
9 - - - - -
10 XAVIER BECERRA, SECRETARY OF)
11 HEALTH AND HUMAN SERVICES, ET AL.,)
12 Petitioners,)
13 v.) No. 23-253
14 NORTHERN ARAPAHO TRIBE,)
15 Respondent.)
16 - - - - -
17
18 Washington, D.C.
19 Monday, March 25, 2024
20
21 The above-entitled matter came on for oral
22 argument before the Supreme Court of the United
23 States at 10:03 a.m.
24
25

1 APPEARANCES:

2 CAROLINE A. FLYNN, Assistant to the Solicitor General,
3 Department of Justice, Washington, D.C.; on behalf
4 of the Petitioners.

5 ADAM G. UNIKOWSKY, ESQUIRE, Washington, D.C.; on
6 behalf of the Respondent in 23-253.

7 LLOYD B. MILLER, ESQUIRE, Washington, D.C.; on behalf
8 of the Respondent in 23-250.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	CAROLINE A. FLYNN, ESQ.	
4	On behalf of the Petitioners	4
5	ORAL ARGUMENT OF:	
6	ADAM G. UNIKOWSKY, ESQ.	
7	On behalf of the Respondent in 23-253	42
8	ORAL ARGUMENT OF:	
9	LLOYD B. MILLER, ESQ.	
10	On behalf of the Respondent in 23-250	80
11	REBUTTAL ARGUMENT OF:	
12	CAROLINE A. FLYNN, ESQ.	
13	On behalf of the Petitioners	101
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (10:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument first this morning in Case 23-250,
5 Becerra versus the Apache Tribe.

6 Ms. Flynn.

7 ORAL ARGUMENT OF CAROLINE A. FLYNN

8 ON BEHALF OF THE PETITIONERS

9 MS. FLYNN: Mr. Chief Justice, and may
10 it please the Court:

11 The Indian Self-Determination Act
12 requires the Indian Health Service to enter into
13 contracts with tribes to transfer federal health
14 programs that IHS previously carried out for the
15 tribes' benefit. ISDA's basic design is simple.
16 IHS takes the appropriated funds it would have
17 otherwise spent on the federal program and
18 transfers those funds to the tribe in exchange
19 for the tribe's promise to use them to provide
20 the same level of services, and ISDA obligates
21 IHS to add to that core secretarial amount
22 contract support costs to plug specific gaps the
23 secretarial amount does not cover.

24 What the tribes are arguing here is
25 that ISDA also obligates IHS to subsidize the

1 tribes' expenditures of funds that they don't
2 receive from IHS under the contract but, rather,
3 collect from third parties as supplemental
4 revenue.

5 The statutory text and context refute
6 that theory, which would upend how the statute
7 has been administered for 35 years. ISDA's
8 provisions addressing contract support costs say
9 anything about third-party revenue a tribe may
10 earn. ISDA deals with that separate income
11 stream in other provisions, including one
12 instructing that such income shall be treated as
13 supplemental funding to that in the contract.

14 The tribes' argument that Congress
15 actually intended for such income to determine
16 what IHS pays under the contract would work a
17 sea change in ISDA's scheme by potentially
18 tripling the federal government's contract
19 support cost obligation and eventually
20 transforming what the statute designates as mere
21 support costs into the primary component of
22 contract funding.

23 But there is an even more
24 straightforward reason why the tribes' theory
25 here is wrong. It violates Congress's express

1 command that IHS only reimburse costs that are
2 directly attributable to the tribes' ISDA
3 contract. That prohibition applies
4 notwithstanding any other provision of law and
5 would independently bar the agency from paying
6 the costs at issue here even if they might
7 otherwise qualify.

8 I welcome the Court's questions.

9 JUSTICE THOMAS: Are there limitations
10 on how the tribe can use the outside income --

11 MS. FLYNN: There are --

12 JUSTICE THOMAS: -- the additional
13 income?

14 MS. FLYNN: -- there are two statutory
15 conditions that are applicable to how tribes can
16 use these -- this third-party reimbursement
17 income. Those are in 5325(m)(1). That's a
18 provision --

19 JUSTICE THOMAS: And what's that
20 limitation?

21 MS. FLYNN: So, there, it says they
22 have to use it to further the general purposes
23 of the contract. And --

24 JUSTICE THOMAS: Well, if that's the
25 case, I guess their argument is then it is a

1 part of the contract?

2 MS. FLYNN: They have an argument that
3 because all of ISDA 20 -- Title I is
4 incorporated via a cross-reference in the
5 authority section of the model contract, that
6 that provision, (m)(1), is incorporated.

7 But that provision also has to be read
8 consistent with the provision of the Indian
9 Health Care Improvement Act. That's 1641(d)(2).
10 And that governs the same reimbursement income
11 and says tribes just have to use it "for any
12 healthcare-related purpose" or otherwise defer
13 to the purposes of that law, which include
14 things as varied as including the presence of
15 tribal members in healthcare professions.

16 So it is a very open-ended limitation
17 that is not limited to just providing additional
18 contract services.

19 JUSTICE SOTOMAYOR: I'm sorry, but --

20 CHIEF JUSTICE ROBERTS: Well, under --
21 under your approach, a tribe is worse off if --
22 the more they undertake in -- in the direction
23 of self-determination, right?

24 MS. FLYNN: I would --

25 CHIEF JUSTICE ROBERTS: In terms -- in

1 terms of funding, they are undertaking more
2 healthcare responsibilities and getting a
3 smaller percentage of the money back from the
4 government.

5 MS. FLYNN: I would respectfully
6 disagree with that, Your Honor. I believe
7 you're referencing the -- the mathematical hypo
8 that the tribes have offered in their brief
9 saying that there is what they call a
10 self-determination penalty because --

11 CHIEF JUSTICE ROBERTS: Right.

12 MS. FLYNN: -- for the same amount of
13 third-party reimbursement income HHS brings in,
14 the tribe won't be able to provide the same
15 level of services. But that assumes that HHS,
16 when it's -- or IHS, when it's running its own
17 program, and the tribes are earning the same
18 amount of third-party income.

19 And there are ways that statute has --
20 or that Congress has built flexibilities into
21 the statute to enable tribes to earn more
22 third-party reimbursement income in the first
23 instance and have greater flexibility to spend
24 it so as to leverage it to build their programs
25 in ways that IHS cannot.

1 And so you don't -- there is --

2 CHIEF JUSTICE ROBERTS: Well, how is
3 that? I mean, they're getting more Medicare,
4 Medicaid assets -- or financing that they can
5 then use, but the -- under the interpretation of
6 the government, they're not reimbursed for that.

7 MS. FLYNN: Well, they're earning more
8 in the first instance, for instance, because
9 tribes running their own programs can
10 unilaterally decide to serve non-Indians and
11 other noneligible beneficiaries. IHS --

12 JUSTICE KAGAN: But what about the
13 tribes that don't want to do that? I mean, I
14 think you said that maybe half the tribes serve
15 non-Indians, but the other half don't and,
16 presumably, have decided that they don't want
17 to. And then the Chief Justice's question would
18 apply in full force. They're getting less
19 because they've gone the independent route.

20 MS. FLYNN: Well, I -- I think that
21 Congress gave them that flexibility so that they
22 could grow their programs that way, but the
23 other ways in which IHS is differently situated
24 is that IHS can't use Medicaid and Medicare
25 proceeds, which are the bulk of the proceeds

1 that we're talking about, to spend on new
2 construction of new facilities. Tribes can.
3 That can enable the tribes to grow their
4 programs and bring in more third-party income.

5 And there's -- the other distinction
6 is that because tribes are able to use their
7 income on any healthcare-related purpose,
8 whereas IHS is subject to a first use
9 requirement where they have to specifically
10 reinvest that money in Medicaid and Medicare
11 program compliance, there's also just a
12 limitation on how IHS can build the program,
13 even aside from the decision to serve --

14 JUSTICE KAGAN: Well, is that really
15 --

16 MS. FLYNN: -- non-Medicare
17 beneficiaries.

18 JUSTICE KAGAN: -- so different? I
19 mean, presumably, the tribes also have to make
20 sure they're compliant with Medicare and
21 Medicaid, so, presumably, they're having to put
22 money into the same things.

23 MS. FLYNN: So I believe Congress
24 thought it was a difference when they
25 deliberately exempted the tribes from that

1 requirement and said that they can prioritize
2 other uses of these funds, including program
3 expansion, rather than having to ensure complete
4 compliance with Medicaid and Medicare in the
5 first instance.

6 JUSTICE KAGAN: Well, I mean --

7 MS. FLYNN: But I would --

8 JUSTICE KAGAN: -- they have to make
9 sure that the Medicare and the Medicaid monies
10 keep flowing in, and for them to -- for those
11 monies to keep flowing in, they have to be
12 compliant with the program terms.

13 MS. FLYNN: Right, but they have a
14 sort of accounting and prioritization
15 flexibility that IHS does not have.

16 But the other thing is -- I would say
17 about all this is this is -- we're talking now
18 about the tribes' argument that there is some
19 kind of a contractual condition having to do
20 with spending the money that shows that Congress
21 would have wanted this to be considered -- to
22 help determine contract support costs, but I
23 think, when you look at the contract support
24 cost provisions themselves, they tie the
25 obligation to pay these costs to the federal

1 program that is the subject of the contract.

2 And the federal program that is the
3 subject of the contract is the program that the
4 tribes agreed to carry out in exchange for the
5 secretarial amount to the same extent as those
6 -- that secretarial amount funding will allow
7 them to perform.

8 JUSTICE GORSUCH: Counsel --

9 MS. FLYNN: And --

10 JUSTICE GORSUCH: -- I had thought
11 that a lot changed after 2010 and the tribes
12 became payer of last resort and -- under
13 Obamacare, and -- and so they've taken on a lot
14 more obligations here. Is that right?

15 MS. FLYNN: The payer of last resort
16 provision means that when there are different
17 available sources of funds, that the tribes or
18 the IHS program is --

19 JUSTICE GORSUCH: Is the payer of last
20 resort?

21 MS. FLYNN: -- among the available
22 sources of funds. We don't interpret that
23 provision to require tribes to enroll in --

24 JUSTICE GORSUCH: No, but --

25 MS. FLYNN: -- Medicare and Medicaid,

1 for instance.

2 JUSTICE GORSUCH: -- the ones that
3 have, it's -- it's -- it's -- it's -- that's
4 what's changed. That's why we're here, I think,
5 in part. And so they have to collect -- and
6 they have to collect from Medicare and Medicaid,
7 right? That's that --

8 MS. FLYNN: Again, I don't think that
9 provision requires them to enroll in --

10 JUSTICE GORSUCH: No, but, once --
11 once they -- once they take on this obligation,
12 they have -- they have a duty to collect the
13 funds from third parties?

14 MS. FLYNN: We have not disputed that
15 reading of the payer of last resort provision in
16 this case --

17 JUSTICE GORSUCH: Okay.

18 MS. FLYNN: -- but I'm not sure that
19 IHS --

20 JUSTICE GORSUCH: Okay. So they have
21 -- they have to collect it, and then the
22 question is how they spend it. And -- and
23 (m)(1) says it has to be consistent with the
24 general purposes of the contract. You indicated
25 that. And the contracts are specific about what

1 services they provide. EMS in some cases, other
2 kinds of particular services, right?

3 MS. FLYNN: Yes.

4 JUSTICE GORSUCH: So the general
5 purpose of the contract is Indian health, right?

6 MS. FLYNN: Yes, I agree with that.

7 JUSTICE GORSUCH: And Indian health,
8 right?

9 MS. FLYNN: Yes.

10 JUSTICE GORSUCH: Not -- not -- not --
11 not non-Indians?

12 MS. FLYNN: Yes.

13 JUSTICE GORSUCH: Okay. And -- and
14 it's even more specifically limited by the
15 particular services that tribes have contracted
16 to provide, like, for example, in one of the
17 cases, EMS services, right?

18 MS. FLYNN: I agree with that, but the
19 services --

20 JUSTICE GORSUCH: So --

21 MS. FLYNN: -- that the tribe is -- I
22 just --

23 JUSTICE GORSUCH: So, if you do agree
24 with that, then what's the problem here? You
25 raised the specter that they're going to expand

1 their programs to help non-Indians. Maybe
2 they're free to do that -- you're right --
3 statutorily.

4 But, in terms of the contract support
5 services that would be required to be paid from
6 the government, it would seem to be limited, A,
7 as you agreed, by the general purpose of the
8 contract, which is Indian health, not non-Indian
9 health, and, two, more specifically, by the
10 specific services that the government has
11 contracted to allow the tribes to provide --

12 MS. FLYNN: I -- I don't under --

13 JUSTICE GORSUCH: -- particular
14 services.

15 MS. FLYNN: -- I don't understand that
16 to be the tribes' position in this case, is that
17 the extra contract support costs they're asking
18 for be limited to that tied to reimbursement
19 income that came from serving only --

20 JUSTICE GORSUCH: Why isn't that -- it
21 has to be consistent with the general purposes
22 of the contract, (m)(1). So those -- those
23 purposes are the specific services that have
24 been provided -- contracted to be provided.

25 MS. FLYNN: So I -- I would not fight

1 Your Honor on imposing that limitation if you
2 were to say that there is some additional
3 contract support cost obligation tied to
4 third-party reimbursement.

5 JUSTICE GORSUCH: Okay. So would that
6 -- would that --

7 MS. FLYNN: I'm talking about the --

8 JUSTICE GORSUCH: -- would that take
9 care of all the government's concerns about and
10 -- and -- and the parade of horrors about the
11 money being used for non-Indian healthcare?
12 Because it would seem to.

13 MS. FLYNN: Well, again, that wasn't
14 what the lower court found here, and I don't
15 believe that's what the tribes are arguing, but,
16 I mean, I think we would still have a situation
17 where, because third-party reimbursement income
18 has been increasing and because that would then
19 directly, according to the tribes' theory,
20 determine how much contract support cost the
21 agency is paying and that amount would grow and
22 snowball over time, it would overtake the
23 secretarial amount of the primary --

24 JUSTICE GORSUCH: Well, it certainly
25 has grown over time, but that's a function,

1 again, of them becoming payors of last resort
2 the way IHS sometimes is. And -- and that is a
3 big change. I grant you that.

4 But I think you just agreed that
5 properly read, (m)(1) would limit it to Indian
6 healthcare and the particular services the
7 government is contracting for the tribes to
8 supply.

9 MS. FLYNN: So I would agree that the
10 -- the estimate we've provided about how, if the
11 tribes' theory were adopted or imposed on the
12 program nationwide, that would amount to about
13 800 million to \$2 billion per year. That would
14 be different, I assume, if that --

15 JUSTICE GORSUCH: It would be a lot
16 smaller under what I've just described, wouldn't
17 it?

18 MS. FLYNN: It would be smaller. I
19 don't have the information to tell you how much.

20 JUSTICE KAVANAUGH: Is that -- is that
21 issue -- is that issue before us?

22 MS. FLYNN: That wasn't what the lower
23 courts decided here. I don't take the tribes to
24 be excluding reimbursement revenue from
25 non-Indian beneficiaries from the kind of

1 contract support costs they're asking for, and
2 so I -- I, you know, would be open to this Court
3 to --

4 JUSTICE KAGAN: I had thought --

5 MS. FLYNN: -- rule that way, but --

6 JUSTICE KAGAN: -- that -- maybe I'm
7 wrong, but -- Mr. Unikowsky can say so, but I
8 had thought that one of Mr. Unikowsky's
9 arguments sounded in this vein, that -- you
10 know, that to the extent that the government was
11 saying, oh, there are all these possible abuses
12 out there in the world, that there was a ready
13 solution, which was to limit it to the services
14 that the tribe is providing to Indians under the
15 contract.

16 MS. FLYNN: To -- just to clarify, we
17 don't think it's an abuse to, you know, take
18 advantage of the flexibilities that Congress has
19 allowed to decide to serve non-beneficiaries if
20 it will not diminish the care available to
21 eligible Indians, but --

22 JUSTICE KAGAN: I'll take that as a
23 friendly amendment.

24 MS. FLYNN: But I understood my friend
25 representing the Northern Arapaho to say that if

1 the tribe actually does spend third-party
2 reimbursement income on program services, that
3 that should lead to a different result.

4 I don't think that solves the -- the
5 problem for his argument there, but I didn't
6 take him to be saying that you limit the kind of
7 third-party reimbursement income to just that
8 provided to Indians. That is not something I
9 have seen raised in this case.

10 JUSTICE KAVANAUGH: That's not raised
11 at all --

12 MS. FLYNN: Perhaps they can clarify.

13 JUSTICE KAVANAUGH: -- is it? I mean,
14 that's just not raised at all?

15 MS. FLYNN: No, I don't think so.

16 JUSTICE KAVANAUGH: I -- I didn't -- I
17 didn't see it at least.

18 MS. FLYNN: No, I don't think so.

19 JUSTICE BARRETT: Counsel --

20 JUSTICE SOTOMAYOR: Counsel -- I'm
21 sorry.

22 JUSTICE BARRETT: Go ahead.

23 JUSTICE SOTOMAYOR: Counsel, you've
24 been talking about this costing a lot. It may
25 well be. And -- and I'm interested in the other

1 side's response to the series of questions that
2 are going on now about that limitation.

3 But I understand that in terms of
4 tribal healthcare, it's about one-third of what
5 is spent by the average American on their own
6 healthcare. So it's not as if all of this money
7 is bringing us a luxury healthcare spa. It's
8 actually bringing us to a fairly minimal level
9 of healthcare for tribal members.

10 I still don't understand how your
11 interpretation makes any contract support system
12 costs, or many of them, recoverable at all
13 because you seem to be saying that if you're
14 providing services with a -- you have services
15 with a third party like Medicare or Medicaid,
16 why would that then include contracts with a
17 consultant who comes in to do the other services
18 that the contract requires for the government?

19 There's always third-party contract --
20 contract supports that are reimbursed by the
21 government. Why is this any different? They're
22 not providing the service because of Medicaid or
23 Medicare. They're providing the service because
24 of their agreement with the government. This is
25 only a reimbursement. It's not a required

1 service agreement.

2 MS. FLYNN: So I do want to make sure
3 to respond to the point that Your Honor raised
4 in the beginning of your question about the
5 underfunding of Indian health, and IHS, you
6 know, agrees with that and is seeking additional
7 appropriations from Congress but just doesn't
8 believe that upending the funding scheme in this
9 way in an open-ended way is what --

10 JUSTICE SOTOMAYOR: That -- that
11 assumes the answer to the question, which is
12 that it's upending, if it's clear by the text
13 that if you provide services, you'll be
14 reimbursed for them and for contract support.
15 It's the contract doing that, not -- not
16 upending it.

17 MS. FLYNN: Yes, but I -- to respond
18 to Your Honor's question about 5326 and the two
19 prohibitions there, so you were, I believe,
20 referencing the second prohibition, which is
21 that IHS funds cannot be spent to pay costs
22 associated with any contract that's not with
23 IHS.

24 We understand that prohibition to be
25 limited to contracts by which the tribe receives

1 funds, which is consistent with Congress's --
2 what we understand to be Congress's motivation
3 to not have IHS's appropriated funds be used to
4 subsidize other funding schemes.

5 But, even if you disagree with me
6 about that, I would point you to the first
7 prohibition in 5326. That is the one saying
8 that IHS's appropriated funds cannot be used to
9 spend on -- to reimburse costs that are not
10 directly attributable to ISDA contracts. And we
11 think that that language squarely applies here
12 because attributable is asking for a causation
13 --

14 JUSTICE SOTOMAYOR: The contract
15 requires them to seek reimbursement. How can it
16 not be attributable? As Justice Gorsuch pointed
17 out, before, they didn't have to do it. Now
18 they're forced to do it by contract.

19 MS. FLYNN: Because we think
20 attributable is calling for -- I mean, the word
21 means capable of being produced by or brought
22 about by or caused by. And then you add
23 directly, which is an adverb that doesn't appear
24 the other times that ISDA -- the three other
25 times that ISDA uses the word "attributable."

1 And that is --

2 JUSTICE SOTOMAYOR: Okay.

3 MS. FLYNN: -- there's an extended --

4 JUSTICE SOTOMAYOR: Thank you,
5 counsel.

6 JUSTICE BARRETT: Counsel, can I --
7 I -- I -- this is a complicated statute and so I
8 have a question about how it actually works.

9 It seems to me there's an argument
10 that these costs should be included in the
11 secretarial amount. Am I right that you don't
12 dispute that the costs of collecting the
13 Medicare and Medicaid fall within the
14 secretarial amount?

15 MS. FLYNN: That's correct.

16 JUSTICE BARRETT: Okay. When IHS
17 collects the money, does IHS then spend it?

18 MS. FLYNN: Yes. It has to first
19 dedicate it to the facility that earned it in
20 compliance with Medicaid and Medicare, but yes.

21 JUSTICE BARRETT: Right. So, if the
22 tribe is standing in IHS's shoes, why shouldn't
23 the secretarial amount -- I -- I don't
24 understand the tribes -- and Mr. Unikowsky can
25 address this point -- I don't understand the

1 tribes to be saying it should be part of the
2 secretarial amount, but if the secretarial
3 amount includes the costs of collection, it's
4 not apparent to me why it wouldn't cover the
5 costs of expenditure in the same way that you're
6 saying IHS spends that money.

7 MS. FLYNN: Because the -- well, there
8 are some -- I'm not sure this is Your Honor's
9 question. There are some overhead
10 administrative functions that are included in
11 the secretarial amount if they're the kind of
12 thing that the Secretary could have allocated to
13 that tribe.

14 But, no, the costs of spending income
15 from third parties is not part of the
16 secretarial amount because that is limited to
17 the funds the Secretary otherwise would have
18 provided for the operation of the -- the
19 operation of the program. And then the contract
20 support cost obligation is itself tied as funds
21 to support that amount.

22 JUSTICE BARRETT: Except my confusion
23 is you're saying that the secretarial amount
24 does include the costs of collecting the
25 third-party income, right?

1 MS. FLYNN: Yes, because -- yeah.

2 JUSTICE BARRETT: Yeah. And you --
3 you incur overhead costs when you spend that
4 third-party income as well, which I take to be
5 the entire dispute here, is whether they get
6 coverage for that, right?

7 MS. FLYNN: Right, but I guess I would
8 say the -- the costs of collection and billing,
9 that is associated with providing the services
10 using the secretarial amount itself. These
11 later costs of deciding how to spend those
12 funds, which may not even be -- happen during
13 the same contract period, that is not tied up
14 with the services being provided in the first
15 instance.

16 So the billing function, we think,
17 comes over with the secretarial amount because
18 it's tied up with providing the services and
19 getting the funds in -- in return but not with
20 the later decisions about how to spend this
21 money, which could be spent on building a new
22 facility, starting a new kind of healthcare
23 program the Secretary didn't previously run on
24 the tribes' behalf, that kind of thing.

25 JUSTICE GORSUCH: I think the answer,

1 though, if I understood it correctly, to Justice
2 Barrett is that when IHS does collect
3 third-party payments, it spends that money to
4 advance Indian health, and that includes some
5 overhead costs?

6 MS. FLYNN: Yes, that is correct. But
7 what the statute is telling us to look to for
8 purposes of deciding what counts for contract
9 support cost reimbursement is a federal program
10 --

11 JUSTICE GORSUCH: No, I -- I
12 understand. My question was IHS. And so, when
13 IHS spends that money, it incurs some overhead
14 costs, and those are obviously paid for by the
15 federal government.

16 MS. FLYNN: Yes.

17 JUSTICE GORSUCH: Okay.

18 MS. FLYNN: But the -- the statute is
19 telling --

20 JUSTICE GORSUCH: And then -- and then
21 -- and then -- and then just back to where we
22 were earlier, you said that Mr. Unikowsky didn't
23 raise an argument. I've got page 27 of the
24 brief in front of me. "At a minimum, contract
25 support costs are recoverable when program

1 income is used to fund enumerated services
2 within the contractual scope of work."

3 And he says on page 29 that the
4 Northern Arapaho are prepared to prove that
5 every penny of program income was, in fact,
6 spent for activities enumerated in the
7 contractual scope of work.

8 MS. FLYNN: So I don't understand that
9 to be an argument along the lines Your Honor was
10 suggesting about --

11 JUSTICE GORSUCH: Why not? My
12 argument was -- my question was, aren't they
13 obliged under (m)(1) to spend on general
14 purposes, that's Indian health, and aren't they
15 also obligated to spend in accordance with the
16 contractual services that they've agreed to
17 provide with -- for the government?

18 MS. FLYNN: So I --

19 JUSTICE GORSUCH: That is exactly
20 what's laid out in those pages.

21 MS. FLYNN: I don't think they're
22 distinguishing between serving eligible Indian
23 beneficiaries and those that the tribe is
24 eligible to serve once they make a determination
25 that they can.

1 But the other thing is I believe for
2 at least one of the contract years at issue --
3 we only have one set of contracts with the
4 Northern Arapaho -- in there, they refer to the
5 resolution that the tribe made to serve
6 non-beneficiaries and talk about that in the
7 course of, I think, the scope of work or
8 something like that.

9 So I -- that's why I didn't understand
10 that to be an argument about distinguishing
11 between those two different kinds of
12 reimbursement schemes, but, of course, they can
13 --

14 JUSTICE KAVANAUGH: Can -- can you --

15 MS. FLYNN: -- clarify that.

16 JUSTICE KAVANAUGH: -- can you finish
17 your answer to the first question that Justice
18 Gorsuch just asked?

19 MS. FLYNN: Yes. So I took Justice
20 Gorsuch to be saying that shouldn't -- or
21 perhaps to be suggesting that shouldn't we think
22 of the federal program as that funded by the
23 secretarial amount, the appropriated funds, but
24 also third-party income because that's what IHS
25 would do when running these programs itself.

1 And I was pointing to the statutory
2 phrase, "the federal program that is the subject
3 of the contract." And that's in 5325(a)(3)(i).
4 And the program that is the subject of the
5 contract is the program that the tribe is
6 agreeing to undertake in exchange for the
7 secretarial amount, and you know that from model
8 contract language that appears in the contract.
9 For instance, in the Northern Arapaho -- or in
10 the San Carlos Apache Tribe's contract, it's at
11 JA 54, where it says, "The contractor shall not
12 be obligated to continue performance that
13 requires an expenditure of funds in excess of
14 the amount of funds awarded under this
15 contract." So that is tethering the obligation
16 to perform to the secretarial amount.

17 There's also a provision which also
18 comes from the model contract language that's
19 enacted into the statute, and in the San Carlos
20 Apache Tribe's contract at JA 51, it says, "The
21 purpose of the contract is to transfer the
22 funding and the following related functions,
23 services, programs, and activities."

24 So we think the subject of the
25 contract language in the contract support cost

1 provision, which the next sub-clause which also
2 refers to the federal program, we think, is
3 referring back up to, is the program that is
4 delineated by the secretarial amount, the one
5 that the contractor is promising to undertake in
6 exchange for the secretarial amount, and not
7 parts -- services funded by other funding
8 streams.

9 JUSTICE JACKSON: How do you square
10 that view and that interpretation with the rule
11 of construction that the statute gives us, which
12 says -- I'm looking at 532 -- 5321(g) -- that
13 each provision shall be liberally construed for
14 the benefit of the Indian tribe participating in
15 self-determination?

16 So to the extent -- I don't know
17 whether we need to think of this as ambiguous or
18 not, but they make an argument about what those
19 same provisions mean. Why aren't we bound by
20 this statutory mandate to construe them in their
21 favor?

22 MS. FLYNN: Because we believe that
23 statutory language is calling for courts to
24 apply the Indian canon, the common law Indian
25 canon that has been applied in this Court's

1 cases. And as that Court --

2 JUSTICE JACKSON: It doesn't say that.
3 It doesn't reference the -- can Congress not
4 come up with its own liberal construction
5 provision?

6 MS. FLYNN: It could, but it used the
7 same buzz words that come from this Court's
8 articulation of that canon, which is "liberally
9 construed" and "ambiguities resolved to the
10 benefit of the Indians." That comes from how
11 this Court has phrased the canon in its cases
12 like Chickasaw, Montana Blackfeet. So I think,
13 if Congress was asking for something different,
14 it wouldn't have used the exact same phrasing
15 that calls up the common law canon and all of
16 its roots. And those roots include --

17 CHIEF JUSTICE ROBERTS: You can finish
18 your answer.

19 MS. FLYNN: Thank you. Those roots
20 include looking at context, they include looking
21 at statutory structure, they include thinking
22 about things like common sense. And we've laid
23 out some examples in our reply brief.

24 JUSTICE SOTOMAYOR: I'm sorry --

25 CHIEF JUSTICE ROBERTS: Thank you --

1 thank you, counsel.

2 Justice Thomas, anything further?

3 Justice Alito?

4 Justice Sotomayor?

5 JUSTICE SOTOMAYOR: Just to be clear
6 on that last point --

7 MS. FLYNN: Mm-hmm.

8 JUSTICE SOTOMAYOR: -- I know some of
9 my colleagues believe that we shouldn't be
10 making choices of who to favor in interpretive
11 principles, but it's not us making that choice;
12 it's the statute making that choice, correct?

13 MS. FLYNN: Yes. The statute calls
14 for the application of the Indian canon.

15 JUSTICE SOTOMAYOR: All right. So, if
16 there is an ambiguity, it should be -- we should
17 follow the dictates of the choice specified by
18 Congress, correct? You think there's none, but
19 if we believe there is?

20 MS. FLYNN: Yes, but I believe you can
21 --

22 JUSTICE SOTOMAYOR: All right. Thank
23 you, counsel.

24 CHIEF JUSTICE ROBERTS: Justice
25 Gorsuch?

1 Justice Kavanaugh?

2 JUSTICE KAVANAUGH: Can you just, on
3 the funding amount, 800 million to 2 billion,
4 put that in context here? Because, you know,
5 that number's not contextualized.

6 MS. FLYNN: Sure. So IHS's current
7 contract support cost obligation is about 1
8 billion per year. Its total funding is 8
9 billion per year. And because contract support
10 costs are discretionary funding, it falls under
11 discretionary funding caps government-wide but
12 also applicable to this committee.

13 And so it stands to reason that if all
14 of a sudden contract support costs just explode,
15 Congress is going to have to find the cuts
16 elsewhere to keep the budget under the
17 discretionary spending caps. And we believe
18 there's a real danger that that funding is going
19 to come from the other 40 percent of IHS's
20 budget, which is providing direct services to
21 tribes that decide not to enter into these
22 contracts in contexts --

23 JUSTICE KAVANAUGH: Because Congress
24 couldn't cut, without changing its rules,
25 mandatory spending, correct, so it would have to

1 come out of the other discretionary funding?

2 MS. FLYNN: That's what the cap
3 applies to, yes. And, you know, IHS has asked
4 for this funding to be transferred to mandatory
5 funding. It's asked for years. Congress has
6 not done that. And so --

7 JUSTICE KAVANAUGH: When you say "this
8 funding," which funding?

9 MS. FLYNN: Both just CSC or Contract
10 Support Costs in particular and also all of
11 IHS's --

12 JUSTICE KAVANAUGH: But, right now,
13 it's still discretionary?

14 MS. FLYNN: Right now, it is still
15 discretionary.

16 JUSTICE KAVANAUGH: So subject to the
17 cap, okay.

18 MS. FLYNN: Yes.

19 JUSTICE KAVANAUGH: And that would --
20 okay. I understand that.

21 On the 35 years point, Justice
22 Gorsuch -- I'm just interested in your further
23 response to things changed in 2010 after the
24 Health Care Act was passed in 2010. What was
25 your full response to that? Do you see that as

1 causing the change that prompted this issue, or
2 where -- where else do you see it coming from,
3 other than the overall underfunding problem that
4 Justice Sotomayor raised?

5 MS. FLYNN: So I don't understand --
6 Congress in the Affordable Care Act enacted this
7 payor of last resort provision, but it's not
8 part of ISDA, it's not part of the Indian
9 Healthcare Improvement Act, and so I don't -- I
10 don't understand Congress to have wanted to
11 affect a sea change to ISDA funding by way of
12 that provision. I'm not aware of anything in
13 the legislative background suggesting that that
14 was the case.

15 I would also say that I understood the
16 tribes to be saying that there were changes made
17 in 1994 that actually affected this change.
18 They think that's by the addition of (m) and
19 also the fact that the model contract now has
20 the authority section that cross-references all
21 of Title I.

22 I think that would be a very sort of
23 triple bank shot way of getting across this
24 meaning when Congress was otherwise addressing
25 the relationship between contract funding and

1 the receipt of third-party income.

2 But also, if that is what Congress
3 tried to accomplish in 1994, nobody noticed for
4 decades. IHS has been administering this
5 program the way we've been advocating for in
6 this case since that time.

7 JUSTICE KAVANAUGH: Has anyone in
8 Congress raised concerns about that that you're
9 aware of?

10 MS. FLYNN: I'm not aware of this
11 contract support cost dispute vis-à-vis
12 third-party reimbursement income coming up in
13 the background of these laws. I'm not aware of
14 it ever being raised to the surface.

15 JUSTICE KAVANAUGH: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Barrett?

18 JUSTICE BARRETT: So the questions
19 that I was asking you before really related to
20 53 -- 5325(a)(1) and kind of asking you why this
21 wouldn't have been included in the secretarial
22 amount.

23 MS. FLYNN: Mm-hmm.

24 JUSTICE BARRETT: Just want to clarify
25 something about 5325(a)(2).

1 So, as I understand it, (a)(2)(A), I
2 mean, the example that kept coming up in the
3 briefs was workers' comp.

4 MS. FLYNN: Mm-hmm.

5 JUSTICE BARRETT: And (a)(2)(B), the
6 example would be legal services from DOJ, you
7 know, something that IHS doesn't have to provide
8 for itself or hire lawyers for itself because it
9 has government lawyers outside the agency that
10 it can rely on, correct?

11 MS. FLYNN: Yes.

12 JUSTICE BARRETT: Yes, okay. So, in
13 arguing that these cannot count as contract
14 support costs, does your argument really hinge
15 on the definition of "the program" in (a)(2)(A)?

16 Because it seems like these would not
17 be expenses or -- or I -- I took some of your
18 answers in your brief -- your answers today and
19 your brief to be saying that these are expenses
20 that the Secretary wouldn't normally incur in
21 spending the money because the Secretary has
22 constraints in the way it can spend third-party
23 income that do not apply to the tribe.

24 Do I have that right?

25 MS. FLYNN: Yes.

1 JUSTICE BARRETT: Okay. So why
2 couldn't these then be contract support costs
3 under 5325(a)(2)? Because they are not costs
4 that are normally -- and I want you to ignore
5 your argument about the threshold 5325(a)(2) for
6 this point and just look at 5325(a)(2)(A).

7 Why can't they count as costs that the
8 Secretary does not incur but the tribes do? Is
9 your argument just because they're not incurred
10 in operation of the program?

11 MS. FLYNN: Yes, that's correct. But,
12 if I take Your Honor to be saying that these
13 would qualify under (a)(2)(B) --

14 JUSTICE BARRETT: No.

15 MS. FLYNN: Or sorry.

16 JUSTICE BARRETT: I'm -- I'm asking if
17 they could qualify -- or why can't they qualify
18 under (a)(2)(A).

19 MS. FLYNN: So I think that what
20 (a)(2)(A) is asking about is actually the
21 expenses like the overhead expenses or the
22 expenses like worker comp that comes along with
23 spending, so not with the underlying activity of
24 earning the money in the first instance if --

25 JUSTICE BARRETT: But aren't these

1 costs that tag along with spending, like
2 spending the third-party funds to do whatever it
3 is the tribes choose to do to further the
4 general purposes of the contract?

5 MS. FLYNN: Right, but the same way
6 that these costs tag along with providing the
7 services when you're running the program in the
8 first instance. So what -- the -- when we're
9 talking about the expenses, we're saying the
10 expense -- the added workers' compensation
11 expense that comes along with providing a
12 service, and so I take the tribes to be arguing
13 that it's -- if the service is funded one way or
14 another way, that that's why the expense would
15 be eligible for contract support costs if it is
16 part of the federal program that is eligible for
17 funding.

18 JUSTICE BARRETT: And so the most
19 important part for the government's purposes is
20 that you define this to be outside of the
21 program?

22 MS. FLYNN: Yes. I mean, that's part
23 of our argument. We have the other statutory --
24 yes, yeah, yes.

25 JUSTICE BARRETT: Okay, thanks.

1 CHIEF JUSTICE ROBERTS: Justice
2 Jackson?

3 JUSTICE JACKSON: And you define it to
4 be outside of the program despite the fact that
5 Section 1623(b) requires for IHS or the tribes
6 to be the payor of last resort?

7 MS. FLYNN: Yes, because -- for the
8 reasons I was saying, the program defined for
9 this funding provision, 23 -- or 5325(a), is the
10 federal program that is the subject of the
11 contract.

12 The payor of last resort provision,
13 again, not part of ISDA, is just speaking to
14 when there are eligible sources of funding,
15 which payor has to pay that. But I'm not sure I
16 see that as changing the meaning of the federal
17 program that is the subject of the contract or
18 makes the tribe acting -- act as a contractor
19 when it spends third-party reimbursement income.

20 JUSTICE JACKSON: All right. And if
21 the costs balloon, which seems to be a lot of
22 your concern, you explored with Justice
23 Kavanaugh where the cuts might have to come
24 from, but I'm wondering if there's something
25 that precludes renegotiation of the contracts in

1 light of potential cost escalations of the
2 nature that you're talking about?

3 MS. FLYNN: So I take the tribes to be
4 arguing that we don't have flexibility to change
5 the model contract language that incorporates
6 (m)(1) in the way that they think gives rise to
7 this obligation to pay contract support costs.

8 I'm not sure --

9 JUSTICE JACKSON: There's no revisit
10 -- I -- I just don't know as a matter of just
11 interest here how -- how these contracts work.
12 There's no opportunity for the government to
13 renegotiate terms?

14 MS. FLYNN: We would have to see what
15 a decision says and figure out if that hinges on
16 particular contract language that's not required
17 to be in the contract, but the --

18 JUSTICE JACKSON: What about an amend
19 --

20 MS. FLYNN: -- authority section --

21 JUSTICE JACKSON: -- what been an
22 amendment from Congress? I mean, you say
23 Congress hasn't -- it isn't clear that Congress
24 has really ever focused on this interpretation.
25 So that's a possibility if there's a big

1 ballooning and a problem that arises from that.

2 MS. FLYNN: Sure. It's always the
3 case that Congress could revisit the statutory
4 scheme and take some action to address this
5 problem, but we just don't think that Congress
6 created this problem in how it set up the -- the
7 funding scheme in the first instance.

8 JUSTICE JACKSON: Thank you.

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel.

11 Mr. Unikowsky.

12 ORAL ARGUMENT OF ADAM G. UNIKOWSKY
13 ON BEHALF OF THE RESPONDENT IN 23-253

14 MR. UNIKOWSKY: Mr. Chief Justice, and
15 may it please the Court:

16 The Self-Determination Act entitles
17 the tribes to recover the disputed contract
18 support costs in this case. The bulk of the
19 disputed costs are indirect costs.

20 Under Section 5325(a)(3)(A)(ii), such
21 costs are recoverable if they're incurred in
22 connection with the operation of the federal
23 program, function, service, or activity pursuant
24 to the contract. The disputed costs in this
25 case meet that description. If IHS was running

1 tribal healthcare, it would collect program
2 income and spend it on healthcare services.

3 In the ISDA contract, IHS transferred
4 to the tribe the responsibility both to collect
5 and to spend the program income on healthcare.
6 So, when the tribe carries out healthcare
7 services using program income, it does so as a
8 means of fulfilling its contractual obligation
9 to further the general purposes of the contract.
10 So it's acting pursuant to the contract.

11 And a similar analysis applies to the
12 smaller amount of direct contract support
13 costs sought by Northern Arapaho under Section
14 5325(a)(3)(A)(i).

15 Section 5326 is no barrier for the
16 tribes' recovery of costs in this case. The
17 costs are directly attributable to the contract
18 because they arise from the tribes' work
19 pursuant to that contract, and they're not
20 associated with any third-party Medicare or
21 Medicaid provider agreements because the costs
22 have nothing to do with the work under those
23 agreements.

24 Finally, ruling in the tribes' favor
25 would further the purposes of the ISDA by

1 promoting tribal self-determination and ensuring
2 that adequate resources are available for
3 healthcare in chronically underserved
4 communities.

5 I welcome the Court's questions.

6 JUSTICE THOMAS: Mr. Unikowsky, what
7 do you do with -- you went directly to
8 (a)(3)(A). What do you do with (a)(2)?

9 MR. UNIKOWSKY: So, Your Honor, we
10 don't think we need to independently satisfy
11 (a)(2). But, if you don't agree with me on
12 that, we do --

13 JUSTICE THOMAS: So you think it's
14 just surplusage?

15 MR. UNIKOWSKY: No, it's not
16 surplusage, Your Honor. So I think that the
17 sequence -- I want to make clear I think we do
18 satisfy it, but I just want to, as our
19 first-line argument, in 1988, Congress enacted
20 (a)(2), and there's lots of disputes after that
21 over what was covered, what wasn't covered.

22 IHS was chronically not paying. And
23 so, in '94, Congress added (a)(3) to clarify
24 that those categories of costs are deemed to
25 satisfy (a)(2). So it seems to me that if

1 Congress goes out of its way --

2 JUSTICE THOMAS: Where does it say
3 that?

4 MR. UNIKOWSKY: Well, it says shall
5 include. So, if you look at the ordering,
6 (a)(3) says the contract support costs that are
7 eligible costs for the purposes of receiving
8 funding under this chapter shall include the
9 enumerated categories. There's no
10 cross-reference to (a)(2). There's no proviso.
11 There is a proviso on (a)(1) but not (a)(2).

12 So it just seems to me in viewing this
13 text literally, if you satisfy (a)(3), you
14 prevail, and that's the point of adding this
15 clarification.

16 But I just want to be clear, if you
17 don't agree with anything I just said, that's
18 not essential to our position. If you think
19 that we have to satisfy (a)(2), emphatically we
20 think that we do. You know, (a)(2) says that
21 the costs shall consist of an amount for the
22 reasonable cost of activities which must be
23 carried out by a tribal organization as a
24 contractor to ensure compliance with the terms
25 of the contract. That is satisfied because

1 (m)(1) is a term of the contract.

2 When we are collecting and then
3 spending the -- the program income, we are
4 acting as a contractor. We must, under the
5 contract, collect this money and spend it on
6 healthcare services. So we're acting as a
7 contractor just as much as we're acting as a
8 contractor when we spend money on the
9 secretarial amount.

10 So based on the first part of the
11 argument, there's a number of questions that
12 arose which I wanted to answer. I wanted to
13 answer the questions about non-beneficiaries as
14 well as some of Justice Barrett and some of
15 Justice Kavanaugh's questions.

16 JUSTICE JACKSON: Can I ask you --

17 MR. UNIKOWSKY: Yes. I'm sorry.

18 JUSTICE JACKSON: -- before you do
19 that, really quickly, so (m)(1) is a term of the
20 contract, but what do you say about their
21 argument that (m) -- the (m)(1) obligation is
22 more open-ended than the scope of the work
23 itself?

24 MR. UNIKOWSKY: Well, I mean, it does
25 give the tribe a measure of discretion. It

1 talks about general purposes, but the -- I think
2 that has to be read in conjunction with the
3 contract itself, which doesn't say that the
4 purpose is just generally promote healthcare or
5 generally promote -- to promote, excuse me,
6 self-determination. There's like a purpose
7 provision that says that the purpose of the
8 contract is to transfer an enumerated set --
9 enumerated set of obligations from IHS to the
10 tribe.

11 So it seems to me that furthering the
12 general purpose of the contract requires
13 slotting it in one of those enumerated purposes
14 or at least something that's like really close
15 to those purposes. I realize the word "purpose"
16 has "general," the word "general," attached to
17 it, but I don't think that that entitles the
18 tribes to just do whatever it wants to or spend
19 the money on healthcare in general. It's got to
20 be tied to the purpose provision in the contract
21 itself.

22 CHIEF JUSTICE ROBERTS: Well, but, I
23 mean, if you add the direction to interpret the
24 statutory language in favor of the tribes, that
25 purpose provision doesn't seem to me to be a

1 very significant constraint. I mean, the -- the
2 argument on the other side, or at least one of
3 the concerns, is that the tribes would be able
4 to expand the provision of healthcare to all
5 sorts of areas that do not primarily benefit
6 tribal members and yet still be entitled to
7 reimbursement.

8 MR. UNIKOWSKY: All right. So let me
9 address this issue of non-beneficiaries head-on
10 because I understand it came up significantly in
11 the first part of the argument.

12 Okay. So, first of all, for about
13 half of tribes, including San Carlos, they don't
14 serve non-beneficiaries at all. Even for the
15 others, it's often very little. So let me just
16 explain what Northern Arapaho does because a
17 statement was made in the first half of the
18 argument about Northern Arapaho's services to
19 non-beneficiaries.

20 Non- -- Northern Arapaho does serve
21 non-beneficiaries but only if they're employees
22 of Northern Arapaho's healthcare program. And
23 that's less than 3 percent of the total number
24 of users of Northern Arapaho's program. So if
25 there's a nurse who's non-Indian who lives on

1 the reservation and works at a Northern Arapaho
2 clinic and then she wants to get her blood
3 pressure checked, then as an employee benefit,
4 she can do that in the same building. She
5 doesn't have to drive potentially a long
6 distance in central Wyoming to some other
7 clinic.

8 But that is not -- that's not paid for
9 by IHS. She has to pay out-of-pocket or,
10 realistically, from her own insurance policy.
11 Okay? So none of the Secretary's funding ever
12 goes to the provision of healthcare to those
13 non-beneficiaries.

14 JUSTICE KAGAN: That's not true for
15 some tribes, is it?

16 MR. UNIKOWSKY: No, I think it's true
17 for all tribes. The tribes can serve, but they
18 can't spend the government's money because there
19 can't be a diminution of healthcare services for
20 Indians. So I think the way it works is the
21 non-Indian has to pay out-of-pocket or from the
22 person's own insurance policy, and the tribe
23 collects that money. I will acknowledge the
24 tribe does consider that to be program income.
25 That's not a question raised in this case.

1 But the tribe thinks that if it's
2 actually collecting that money, that's program
3 income, but it then spends every single penny of
4 that money on services for Indians. We never,
5 ever spend the program income that we obtain on
6 services for --

7 CHIEF JUSTICE ROBERTS: Well, but
8 you're --

9 JUSTICE KAGAN: That's true for all
10 tribes?

11 MR. UNIKOWSKY: Yes, I think it is
12 true. Absolutely it's true, that non-Indians
13 who use the services, they have to pay from
14 their own insurance policy. The tribe may
15 collect that money and spend it, but the tribe
16 is not spending program income to fund services
17 for non-Indians.

18 CHIEF JUSTICE ROBERTS: Well, but
19 you're talking about the principle, but we're
20 talking about support services, and I assume
21 they don't -- well maybe they do -- allocate
22 support services differently depending upon
23 which services go primarily to non- --
24 non-tribal members and others to tribal members?

25 MR. UNIKOWSKY: So, historically,

1 Northern Arapaho hasn't done that just because
2 it's such a tiny percentage. That's a question
3 that's not raised in this case.

4 I think that the government, if it
5 wishes to, can argue, can defend the case on the
6 ground that a portion of the services that are
7 allocable to non-Indians shouldn't be included.
8 And that's fine. That can -- that can be
9 litigated.

10 I mean, there's -- the -- the argument
11 on the other side is that there's this
12 provision, Section 1680, that says -- 1680c,
13 that says that services provided shall be -- to
14 non-Indians shall be deemed to be provided under
15 this agreement. But, like, that hasn't been
16 construed. It's not an issue in this case. So
17 we'd ask the Court to -- to reserve that
18 question.

19 JUSTICE KAGAN: So if I can understand
20 what your argument on page 27 refers to, what
21 the limitation is in that argument and what it's
22 not.

23 MR. UNIKOWSKY: Okay. So the
24 argument -- the alternative argument we have
25 made is that every single penny of program

1 income that we receive under these contract
2 years, we spend it on services enumerated in the
3 scope of work, for Indians only. Okay?

4 And that's really because the scope of
5 work for Northern Arapaho is pretty broad. It's
6 like all, you know, outpatient medical services,
7 dental services, radiology. There's, you know,
8 behavioral health. There's lots and lots of
9 different services that are transferred in the
10 scope of work. And so every -- all the dollars
11 we spend are allocated towards programs in the
12 scope of work.

13 But I just want to be clear, the --
14 the broader argument, we're not saying you can
15 use program income to give -- to -- to offer
16 services to non-Indians. Okay? I think all
17 those services have to go towards Indians.
18 That's what the general purpose of the contract
19 is. It's to serve Indians. And so --

20 JUSTICE ALITO: Put aside --

21 JUSTICE BARRETT: But the thing you
22 should get --

23 JUSTICE ALITO: -- put aside the
24 question of what you are doing and focus on the
25 question of what the statutory language means.

1 So what exactly are the general purposes of the
2 contract under 5325(m)(1)?

3 MR. UNIKOWSKY: Okay. So the purposes
4 of the contract -- I'll get to "general" --
5 modifier "general" in just one second. The
6 purposes of the contract are laid out in the
7 self-determination agreement -- contract itself.
8 And that's part of the model agreement. It says
9 the purposes are to transfer the enumerated set
10 of services from IHS to the tribe. That's the
11 purpose.

12 So in terms of what "general purpose"
13 means, I think that gives the tribe a little bit
14 of discretion. Just as one example, tribes have
15 generally construed "general purposes" to open
16 the door to building facilities at which the
17 services will be offered. So, for instance, if,
18 you know, the responsibility for dental services
19 is transferred, tribes have construed that
20 language to say you can build a clinic.

21 JUSTICE ALITO: Well, is -- are the --
22 could you give me a simpler answer or maybe it
23 doesn't lend itself to a simpler answer? Are
24 the general purposes of the contract simply to
25 further Indian health?

1 MR. UNIKOWSKY: No. I think it's
2 narrower than that --

3 JUSTICE ALITO: No?

4 MR. UNIKOWSKY: -- Your Honor.

5 JUSTICE ALITO: Okay. In -- in what
6 way is it narrower?

7 MR. UNIKOWSKY: I think it's -- the
8 general purpose is you look at the purpose of
9 the contract as laid out in the contract itself,
10 and I think the word "general" modifier requires
11 that at least it be related to those purposes,
12 right? Not just anything to do with Indian
13 health. I just want to make one other point
14 about that.

15 JUSTICE KAGAN: So --

16 JUSTICE ALITO: I still don't
17 understand the -- could you just tell me what it
18 means?

19 MR. UNIKOWSKY: Yeah. So --

20 JUSTICE ALITO: What does it not mean?
21 Suppose -- suppose the tribe wants to set up a
22 scholarship program for tribal members or
23 Indians to go to medical school. Does that fall
24 within the general purposes of the contract?

25 MR. UNIKOWSKY: I probably would say

1 no. This question has never come up. It's
2 never been litigated a single time, for a
3 practical reason.

4 JUSTICE ALITO: Yeah, well, now it's
5 being litigated.

6 MR. UNIKOWSKY: No, it's not, Your
7 Honor, because there's no disputes in this case
8 that we satisfy that general purposes provision.
9 The reason that this generally has not --

10 JUSTICE ALITO: But we have to say
11 what "general purposes" means.

12 MR. UNIKOWSKY: I don't think so, Your
13 Honor. I think --

14 JUSTICE ALITO: No?

15 MR. UNIKOWSKY: -- that you should
16 hold that, as long as that is satisfied, as long
17 as the tribe are adhering to that contractual
18 obligation, then it's -- it's acting pursuant to
19 the contract.

20 The reason this has not -- never been
21 litigated, what "general purposes" means, is
22 that the amount of money that the tribe gets is
23 the sum of these two funding streams and
24 Congress understands that that sum is necessary
25 just to serve the services under the contract.

1 Like --

2 JUSTICE GORSUCH: Mr. Unikowsky?

3 MR. UNIKOWSKY: Yes.

4 JUSTICE GORSUCH: There's not so much
5 money here that the tribes are spending this on
6 frolics and detours, right?

7 MR. UNIKOWSKY: That's correct, Your
8 Honor. There's not even close to enough money.

9 JUSTICE GORSUCH: And there's not even
10 enough money to provide healthcare to the
11 Indians on the reservations, and you're --
12 you're -- you're operating out of decrepit old
13 buildings in many cases. And -- and that's what
14 we're really talking about. Nor are Indian --
15 Indian healthcare services providing massive
16 benefits to non-Indians all across America.
17 We're talking about a reservation in central
18 Wyoming with an incredibly poor population of
19 Native Americans.

20 And general purposes of the contract,
21 you'd agree it has to be Indians?

22 MR. UNIKOWSKY: 100 percent, I agree,
23 Your Honor.

24 JUSTICE GORSUCH: And in your
25 contract, in terms of what is enumerated as the

1 general purposes, include outpatient ambulatory
2 medical care and primary care, nursing, mental
3 health, the clinical medical laboratory,
4 radiology, physical therapy, the pharmacy,
5 optometry, dental care, and community health.
6 You'd agree it has to be limited to those things
7 too?

8 MR. UNIKOWSKY: Yes, Your Honor,
9 absolutely. 100 percent.

10 JUSTICE KAVANAUGH: And --

11 JUSTICE KAGAN: And if you were a
12 tribe that had a -- you seem to provide pretty
13 much the full gamut of healthcare services, but
14 if there were a tribe that didn't, that said,
15 you know, we're only providing emergency
16 services, something like that, then it would
17 have to go only to emergency services; is that
18 correct?

19 MR. UNIKOWSKY: I agree. I mean,
20 that's maybe more of a question for Mr. Miller,
21 who -- his client had such a contract. But,
22 yes, that is my understanding of -- of general
23 purposes.

24 JUSTICE SOTOMAYOR: What do you do
25 with their argument that there are expenses that

1 the government doesn't incur, like building
2 buildings, that that's not included in their
3 formula? Why should you get support service
4 funds for that activity?

5 MR. UNIKOWSKY: So my primary answer
6 to that is we actually don't. I mean, there's a
7 -- there's back and forth in the briefs about
8 this, but like, the cost methodology IHS
9 actually requires us to deduct the construction
10 cost from the cost base when we're calculating
11 contract support costs.

12 So, translated into English, what that
13 means is that if we're essentially hiring a
14 subcontract to build a building, we just
15 transfer a bunch of money to the subcontractor,
16 that doesn't generate overhead costs. It's the
17 subcontractor who has the overhead, not us.

18 So under the IHS's cost allocation
19 methodology in the Indian Health Manual, we have
20 to deduct those costs anyway. So as a practical
21 matter, it -- it really doesn't come up.

22 The other thing is it's not like
23 Congress doesn't like construction. It's just
24 there's two separate appropriations provisions.
25 Like there's one to the Indian Health Service

1 for services, and then there's a separate stream
2 for -- for construction. And so Congress has
3 just ensured that there's no mixing, that a
4 certain amount of money is for services and a
5 certain amount is for --

6 JUSTICE KAVANAUGH: On -- on --

7 JUSTICE SOTOMAYOR: So to -- to the
8 extent that the government doesn't pay for
9 certain things or they're not included in the
10 program, you're not getting reimbursed contract
11 --

12 MR. UNIKOWSKY: No, we don't -- we
13 don't add, we don't seek contract support costs.

14 JUSTICE SOTOMAYOR: All right. Could
15 I ask one -- I mean, the government, one of
16 their biggest arguments is the practical
17 consequences of this, that you're going to be
18 depriving money from direct service tribes.

19 How do you respond to that?

20 MR. UNIKOWSKY: All right. If I can
21 offer a couple responses. So, first of all, the
22 liberal construction provision in the
23 self-determination contract says that the
24 provisions of the statute and contract will be
25 construed liberally for the benefit of the

1 contractor. So that's the -- that's not all
2 tribes in general. That's for the contractor in
3 particular. So I think the Court should --
4 should remain focused on the contractor's
5 interests when applying that.

6 Second of all, I -- I think it's going
7 --

8 JUSTICE SOTOMAYOR: It's a nice
9 answer, but it doesn't answer --

10 MR. UNIKOWSKY: Well, no, but I
11 have -- I have a different answer, okay?

12 (Laughter.)

13 MR. UNIKOWSKY: So I -- I think it's
14 notable that two pantribal organizations, the
15 National Indian Health Board and the National
16 Congress of American Indians, both of which have
17 members, both ISDA and non-ISDA members, have
18 submitted amicus briefs in our support because I
19 think the feeling is among tribal organizations
20 that the Self-Determination Act is so important
21 for Indian sovereignty that we're willing to
22 accept the risk that Your Honor just identified.

23 JUSTICE KAVANAUGH: And the risk is
24 if -- just so I understand it, if Congress
25 doesn't change the discretionary funding cap

1 that applies to IHS generally and you prevail in
2 this case, it necessarily will mean less funding
3 for other tribes that IHS directly provides
4 healthcare for? Is that the -- that's the
5 issue?

6 MR. UNIKOWSKY: That's the -- that's
7 the -- I mean, that's assuming that the
8 appropriations amount will stay the same, and
9 that's completely speculative. I mean, after
10 the Salazar --

11 JUSTICE KAVANAUGH: Right. I -- I
12 said if.

13 MR. UNIKOWSKY: Yeah, if.

14 JUSTICE KAVANAUGH: If it stays the
15 same, your position will hurt the other tribes?

16 MR. UNIKOWSKY: Theoretically, there
17 would -- you know, yes, if there's a limited pot
18 of money and more goes to one thing, then less
19 goes to the other. That's just simple
20 mathematics.

21 JUSTICE KAVANAUGH: Exactly. That's
22 why it's -- we've got to think about this more
23 generally than just -- I mean, your first answer
24 to Justice Sotomayor was a bit narrow. Thank
25 you.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.

3 Justice Thomas?

4 Justice Alito?

5 JUSTICE ALITO: It's my understanding
6 that the tribes have been able to collect
7 program income subject to 5325(m)(1) for many
8 years. When was the first time a tribe made the
9 type of challenge that is before us here?

10 MR. UNIKOWSKY: I think it was in the
11 early 2010s, but I think there's a good
12 explanation for that, Your Honor.

13 JUSTICE ALITO: So how is it that
14 these tribes represented by excellent attorneys
15 like you and Mr. Lloyd left all this money on
16 the table for so many years?

17 MR. UNIKOWSKY: So there's two basic
18 answers. One is that for many years there's
19 these appropriations caps under which tribes
20 couldn't even recover contract support costs on
21 the secretarial amount. It took two cases from
22 this Court, the Cherokee Nation case and then
23 the Salazar versus Ramah Navajo Chapter case in
24 2012, for this Court to hold that the tribes
25 actually are entitled to all of the contract

1 support costs under the statute, and that's when
2 these lawsuits started being brought.

3 And the second point is the payor of
4 last resort provision that Justice Gorsuch
5 raised. So, like, that's when tribes really
6 started feeling like they had to go out and
7 collect this money, they had no choice. And, by
8 the way, it's not just the statute. Our
9 contract, Northern Arapaho's contract, also
10 requires us to collect it, and so we were
11 encountering all of these support costs.

12 So this issue just didn't come up. I
13 don't think that there's some kind of tradition
14 here that's really relevant because the facts on
15 the ground changed in the early 2010s. That's
16 when the tribes started bringing these lawsuits.

17 JUSTICE ALITO: All right. So the
18 statute of limitations for this is six years,
19 right?

20 MR. UNIKOWSKY: Correct.

21 JUSTICE ALITO: And if the government
22 is right that the annual costs of accepting your
23 reading could be \$2 billion, then the first year
24 bill could be more than \$12 billion?

25 MR. UNIKOWSKY: I don't think that's

1 the case. So, first of all, that 800 --

2 JUSTICE ALITO: Why not? Why would
3 that not be the case?

4 MR. UNIKOWSKY: Well, first of all, we
5 don't know where that estimate comes from.
6 Like, that's not in the record. It's just a
7 conversation between someone at IHS with the
8 SG's office giving these numbers that come out
9 of nowhere from our perspective.

10 JUSTICE ALITO: Well, what numbers do
11 you have?

12 MR. UNIKOWSKY: We don't have any
13 numbers. It's not -- I mean, having to talk to
14 people in -- in this area, people are -- tend to
15 be skeptical of these high numbers.

16 Like, the government takes the
17 position, it represents that contract support
18 costs will start exceeding the secretarial
19 amount. I don't think that's ever happened.
20 That's certainly not true in these cases. I
21 think that's extremely speculative.

22 And also, the other thing is, I mean,
23 it's true there's a six-year statute of
24 limitations, but I don't think every single
25 tribe in the country is going to necessarily

1 bring these suits. I mean, I can't -- I can't
2 predict.

3 JUSTICE ALITO: Why would they not?

4 MR. UNIKOWSKY: I mean, maybe they --
5 I mean, I can't predict the types of litigations
6 that are going to happen, but, you know, I mean,
7 this is what the statute requires, Your Honor.
8 I mean, the government may --

9 JUSTICE ALITO: Well, what if it turns
10 out that their estimate is right, it's \$2
11 billion a year, so the bill for the first year
12 is \$12 billion? I mean, maybe today \$12 billion
13 is not very much money, but then what would we
14 do? Would we say, well, gee, we made a mistake,
15 we decided the case based on the wrong
16 assumption?

17 MR. UNIKOWSKY: No, I don't think that
18 the amount of money in hypothetical judgments
19 from a number that is not in the record and it
20 was just taken out of nowhere is a basis to
21 decide this case against the tribe.

22 JUSTICE ALITO: Well, if it has such
23 -- if your reading has such severe consequences,
24 does that say something about the plausibility
25 of the reading?

1 MR. UNIKOWSKY: I don't think -- I
2 just respectfully disagree.

3 JUSTICE ALITO: Congress hid this --
4 this -- this mastodon in an ant hill, in an ant
5 hole or whatever it is, elephants in mouse
6 holes? This is even bigger?

7 MR. UNIKOWSKY: I don't think it's
8 really an elephant in a mouse hole. I mean, the
9 amount of program income we're -- we're already
10 getting contract support costs in the
11 secretarial amount. There's in some cases a
12 smaller, occasionally a larger amount of program
13 income, and we're just seeking the same
14 reimbursement based on the same rate for that
15 additional unit of income. So I -- I just -- I
16 don't think it's -- it's that extreme of an
17 outlier.

18 JUSTICE ALITO: Thank you, thank you.

19 CHIEF JUSTICE ROBERTS: Justice
20 Sotomayor?

21 Justice Kagan?

22 Justice Gorsuch?

23 JUSTICE GORSUCH: I just want to make
24 sure I got it right with respect to why this
25 happened. You brought suit in 2011, I think, is

1 that right, somewhere in there? One of you did.

2 MR. UNIKOWSKY: It was not my -- our
3 case, ours is 2016 and 2017.

4 JUSTICE GORSUCH: 2017?

5 MR. UNIKOWSKY: That's ours, yeah.

6 JUSTICE GORSUCH: All right, all
7 right. Okay. I think one was 2011.

8 MR. UNIKOWSKY: But we -- we weren't
9 -- we didn't even enter into these contracts
10 until then, so --

11 JUSTICE GORSUCH: Okay. So you
12 couldn't have brought it before then anyway.

13 MR. UNIKOWSKY: No. No.

14 JUSTICE GORSUCH: And then 2010 you
15 became the payor of last resort. You have a
16 contractual obligation to collect these monies.

17 MR. UNIKOWSKY: Right.

18 JUSTICE GORSUCH: Obviously, that's
19 why now it becomes what happens about spending
20 it.

21 MR. UNIKOWSKY: Right. Plus, tribes
22 weren't -- I mean, again, like before 2012,
23 tribes were getting much less than they were
24 entitled to under the statute because of these
25 appropriations caps which have been lifted by

1 Congress after this Court's decision in Salazar
2 versus Ramah Navajo Chapter. That's what got a
3 lot of this litigation started.

4 JUSTICE GORSUCH: Do you know how much
5 money your client is seeking in contract support
6 costs roughly?

7 MR. UNIKOWSKY: In this case, we're
8 seeking about \$1.5 million for '16 and '17.

9 JUSTICE GORSUCH: One point five
10 million dollars?

11 MR. UNIKOWSKY: About that, yes.

12 JUSTICE GORSUCH: So this 800 million
13 to 2 billion that's on page 44 of their brief,
14 there's no cite?

15 MR. UNIKOWSKY: No, it's an
16 unexplained estimate by IHS that's not in the
17 record of how much something is going to cost.
18 I have to say, like --

19 JUSTICE GORSUCH: And that's also
20 premised perhaps on their understanding that
21 general purposes can include creating --

22 MR. UNIKOWSKY: That it cycles, that's
23 right.

24 JUSTICE GORSUCH: -- spas for
25 non-Indians.

1 MR. UNIKOWSKY. Yeah, it's like
2 there's this language in the brief about cycles
3 of spending money, and we think that's
4 completely implausible and that may have been
5 baked into this unexplained number, Your Honor.

6 JUSTICE GORSUCH: We don't usually
7 allow record evidence to be introduced for the
8 first time in this Court without a citation to
9 anything that might include services that would
10 not be even covered under your interpretation of
11 the agreement.

12 MR. UNIKOWSKY: I agree. I also think
13 the Court can take judicial notice that
14 unexplained government estimates about how much
15 things will cost are not always perfectly
16 accurate, so we'd ask the Court to apply that
17 principle here.

18 JUSTICE GORSUCH: Thank you.

19 JUSTICE KAVANAUGH: They usually
20 underestimate it, but anyway, that's a -- that's
21 a separate issue.

22 Do I have it right that the question
23 here is about the pot of money that comes in
24 from third-party payors, from Medicare,
25 insurers, tortfeasors and what have you, and

1 then you take that pot of money which is under a
2 separate statute and you spend that for
3 healthcare services, correct?

4 MR. UNIKOWSKY: Well, I would quibble
5 with under a statute statute. It's 23 --
6 5325(m)(1) and (m)(2). But, yes, we take the
7 money from Medicare and Medicaid and we spend it
8 on -- on healthcare.

9 JUSTICE KAVANAUGH: And if you were to
10 lose this case, what you do as I understand it,
11 what has happened previously is that you use
12 that pot of money which is separate from the IHS
13 -- IHS appropriated money that comes to you, you
14 use that pot of money to pay not only for the
15 Indian healthcare services but for these
16 overhead costs, right? It comes out of that pot
17 of money?

18 MR. UNIKOWSKY: That's correct. We'd
19 have to use that or maybe the tribe's general
20 treasury, but we wouldn't get it from the
21 Secretary.

22 JUSTICE KAVANAUGH: Okay. And what do
23 you do with -- I don't know that we've mentioned
24 it as much, 5325(m), the provision that says the
25 third-party income is not a basis for reducing

1 the allocation that comes from IHS, which
2 suggests that Congress was concerned about, oh,
3 because you get this third-party money, maybe
4 the IHS amount should be reduced and Congress
5 wanted to say no, that's -- that's not correct,
6 and from that, the implication would be surely
7 they were not anticipating, oh, that it would
8 increase. Just want to make sure you can
9 respond to that.

10 MR. UNIKOWSKY: Yeah, I don't agree
11 with that inference. I think that (m) should be
12 construed literally. As you said, Congress was
13 concerned that IHS would deduct because of the
14 program income and it said don't deduct.

15 And in the exact same statutory
16 amendment in which (m) was enacted, (A)(3) was
17 enacted to specifically address contract support
18 costs. So, instead of drawing a negative
19 implication from (m), I think I would just look
20 at the -- a provision just joined at the hip in
21 the exact same enactment, (A)(3), that
22 specifically addresses the issue of contract
23 support costs and said that we can recover all
24 costs that are in connection with the operation
25 of the federal program, which I think includes

1 program income. It's the same word, "program,"
2 in both provisions.

3 JUSTICE KAVANAUGH: Do you agree that
4 to be an (A)(3) cost, it has to be an (A)(2)
5 cost?

6 MR. UNIKOWSKY: So I don't agree, but
7 even if I'm wrong on that, it doesn't affect our
8 position one bit.

9 JUSTICE KAVANAUGH: Thank you.

10 CHIEF JUSTICE ROBERTS: Justice
11 Barrett?

12 JUSTICE BARRETT: Okay. Tell me why
13 it doesn't affect your position one bit, because
14 it seems to me under (a)(2), you know, there are
15 two qualifications in (A) and (B), and I think
16 (B) doesn't seem to fit very well, so it would
17 have to be (A), but that doesn't seem to fit
18 very well either. So explain to me why that's
19 wrong.

20 MR. UNIKOWSKY: Well, I don't agree,
21 Your Honor. In fact, I don't even think it's
22 disputed that we satisfy (A) and (B). I think
23 the government is disputing the -- the earlier
24 part of the statute talking about a contract to
25 ensure compliance.

1 So -- so, for example, (A) covers
2 things like stuff that the -- that OPM would do,
3 human resources or contracting services that GSA
4 would do, things like that.

5 JUSTICE BARRETT: You mean like
6 everybody keeps talking about workers' comp?

7 MR. UNIKOWSKY: Yeah. That's -- well,
8 that's not -- that's another thing.

9 JUSTICE BARRETT: That's another
10 thing?

11 MR. UNIKOWSKY: Yeah.

12 JUSTICE BARRETT: Okay.

13 MR. UNIKOWSKY: But -- so overhead --
14 most of these costs are actually indirect costs,
15 not direct costs.

16 JUSTICE BARRETT: Okay.

17 MR. UNIKOWSKY: -- which would be
18 workers' comp. So, for example, you know, the
19 tribe wants to hire someone, okay?

20 JUSTICE BARRETT: Right.

21 MR. UNIKOWSKY: There needs to be an
22 HR person. So, if IHS is running healthcare,
23 OPM, a separate branch of the government, is
24 going to be doing all that HR stuff, putting
25 them on the payroll, making sure they're paid,

1 handling their pensions. So that's an -- that's
2 an (A) cost, okay?

3 JUSTICE BARRETT: Okay.

4 MR. UNIKOWSKY: And so the tribe gets
5 that from the government because, you know, if
6 -- if IHS isn't paying for it, nor should the
7 tribe. So what we're seeking in this case are
8 all costs that fall under (A) or (B). It's the
9 exact same type of overhead that the Secretary
10 wouldn't pay out of pocket. It's just with
11 respect to the programs funded by the program
12 income.

13 So, for example, you know, if there's
14 contracting, GSA would do the work if IHS was
15 handling the program. We're doing the work when
16 we're handling the program. That's the money
17 we're seeking, just (A) and (B) money. And --

18 JUSTICE BARRETT: Okay.

19 MR. UNIKOWSKY: -- again, the
20 government does not dispute, as far as I can
21 tell, that we satisfy (A) and (B). All they're
22 disputing is whether we -- we're acting as a
23 "contractor," which is the earlier part of (2).

24 JUSTICE BARRETT: Right.

25 MR. UNIKOWSKY: And I think we are

1 because we are carrying out our contractual
2 obligations when we perform these services under
3 (A)(i).

4 JUSTICE BARRETT: In the same way that
5 the Secretary would?

6 MR. UNIKOWSKY: Yes.

7 JUSTICE BARRETT: In the same way that
8 IHS would if IHS were spending the third-party
9 income?

10 MR. UNIKOWSKY: One -- 100 percent.
11 IHS is required to spend the third -- to collect
12 the third-party money under 1623 and then spend
13 it. So we're stepping into their shoes. We
14 also are required to collect that money and
15 spend it, and so we're just asking to be put
16 into the same -- into their shoes for purposes
17 of contract support costs.

18 JUSTICE BARRETT: And when you spend
19 it when you're standing in their shoes, this
20 back-and-forth about what furthers the general
21 purposes of the contract, you would say or would
22 you not say that you can only claim these
23 contract support costs for expenditures that are
24 of the sort that IHS would also make --

25 MR. UNIKOWSKY: Oh --

1 JUSTICE BARRETT: -- or is it a
2 broader universe?

3 MR. UNIKOWSKY: No, I think, because
4 IHS also has a lot of discretion. So we -- it
5 says for us "further the general purposes of the
6 contract." But IHS has a very, very broad
7 discretion to spend the money on Indian
8 healthcare as well. Like, it's true it's
9 possible that we might spend a particular dollar
10 differently from how IHS would.

11 JUSTICE BARRETT: Mm-hmm.

12 MR. UNIKOWSKY: But, first of all,
13 that happens with the secretarial amount too
14 because the whole point of this statute is to
15 promote self-determination. It reflects the
16 assumption that the tribes may spend a
17 particular dollar differently from how IHS would
18 do it, and Congress thought that was a good
19 thing.

20 So both -- both the tribe and the IHS
21 has a measure of flexibility in spending this
22 money on healthcare. Individual dollars might
23 be allocated differently, but the types of
24 things we're doing, spending money on
25 healthcare, are exactly the types of things that

1 IHS would be doing with the same money.

2 JUSTICE BARRETT: Which might be a
3 reason why your concession is -- was that it
4 can't be spent on non-Indian healthcare because
5 IHS wouldn't spend it?

6 MR. UNIKOWSKY: Absolutely not.

7 JUSTICE BARRETT: So you couldn't
8 stand in their shoes --

9 MR. UNIKOWSKY: No.

10 JUSTICE BARRETT: -- for that purpose.

11 MR. UNIKOWSKY: We -- we --
12 100 percent, no, we cannot spend and we do not
13 spend this money on non-Indian healthcare. If
14 an employee of our program uses the blood
15 pressure facilities or goes to the dentist at
16 one of our clinics, they pay from their own
17 insurance.

18 JUSTICE BARRETT: But you're -- you're
19 collecting the overhead costs of that in
20 contract support costs because you don't parse
21 all that out, right?

22 MR. UNIKOWSKY: So that -- that -- so
23 that's not an issue that's been raised in this
24 case. Just because it's so de minimus, I think,
25 we haven't done that. It's possible in a

1 different case the government can say you have
2 to parse that out, and that -- that's an issue
3 that can be litigated.

4 JUSTICE BARRETT: Is there anything
5 that you spend these third-party funds on that
6 IHS does not, or is it complete overlapping
7 circles?

8 MR. UNIKOWSKY: In some of the years
9 after the years in question, I think we spent
10 some of the money on facility construction,
11 which IHS doesn't under these riders. But,
12 again, like, the -- the federal government
13 spends money on facilities. They're just a
14 separate stream of appropriations.

15 But, in general, when we do that --
16 and, again, that's -- the representation in my
17 brief is -- is accurate because these are years
18 after the years in question.

19 JUSTICE BARRETT: Mm-hmm.

20 MR. UNIKOWSKY: Even when we've done
21 that, we don't consider that to be included in
22 the base.

23 JUSTICE BARRETT: Okay.

24 MR. UNIKOWSKY: As I said, we deduct
25 the costs of construction.

1 JUSTICE BARRETT: Okay. Thank you.

2 CHIEF JUSTICE ROBERTS: Justice
3 Jackson?

4 JUSTICE JACKSON: So I just want to be
5 clear on the purposes of the contract because
6 that's the most interesting thing that I think
7 I've heard you say. In looking at the Joint
8 Appendix, there are -- the contract agreements
9 are here, and there are enumerated purposes.

10 MR. UNIKOWSKY: Yes.

11 JUSTICE JACKSON: I'm looking at JA
12 51, 52. So it's your position that these
13 third-party funds would have to be spent for one
14 of these enumerated categories?

15 MR. UNIKOWSKY: Yes. So that --
16 that's actually San Carlos's contract.

17 JUSTICE JACKSON: Oh, I'm sorry.
18 That's not yours. Excuse me.

19 MR. UNIKOWSKY: Ours is at 124, 125.

20 JUSTICE JACKSON: Yes.

21 MR. UNIKOWSKY: So we spend -- so, I
22 mean, it says "general purposes," which might
23 modify "purposes" a little bit, but as a
24 practical matter, we spend all the program
25 income on the services on -- on 124 and 125.

1 JUSTICE JACKSON: Would you have to?

2 MR. UNIKOWSKY: Yeah, I think so. I
3 think we do have to. I don't think "general
4 purposes" modifies "purposes" to a sufficient
5 degree that we can just go on a frolic and spend
6 money on some completely different thing.

7 JUSTICE JACKSON: So that -- so that's
8 also an answer to Justice Barrett's question?

9 MR. UNIKOWSKY: Yes.

10 JUSTICE JACKSON: That's a limitation
11 on you?

12 MR. UNIKOWSKY: That's how we
13 understand it, yes.

14 JUSTICE JACKSON: Thank you.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 MR. MILLER: Maybe I'll --

18 CHIEF JUSTICE ROBERTS: Mr. Miller.

19 ORAL ARGUMENT OF LLOYD B. MILLER

20 ON BEHALF OF THE RESPONDENT IN 23-250

21 MR. MILLER: Mr. Chief Justice, may it
22 please the Court:

23 Maybe I'll begin with Justice
24 Jackson's question about page 51. We have six
25 programs here, including the EMS program, which

1 is a major feature of the government's motion to
2 dismiss that is the subject of this case. The
3 third-party revenue spending has to be anchored
4 to those six programs. It cannot be spent on a
5 dental program. We don't see dental there. It
6 cannot be spent just on general health. Even
7 interpreting that term broadly and generously in
8 light of the Indian canon, it still has to be
9 anchored in these six programs.

10 With regard to these six programs,
11 when the Indian Health Service awarded a
12 contract to the San Carlos Apache Tribe, and
13 just visualize this, we're talking about 1.8
14 million acres, about 29,000 square miles, a
15 thousand miles of roadless area, a couple hours
16 east of Phoenix, the Emergency Medical Service
17 program was severely underfunded.

18 So, on page 101, the Indian Health
19 Service demands that the tribe agree to a clause
20 that says, in running the EMS program, it will
21 maintain an efficient billing system to maximize
22 third-party revenues.

23 Why? Because IHS knew that there was
24 no way this program could be run at even a
25 moderate level without third-party revenues

1 coming into the program and going out into the
2 program, coming in from program income and going
3 out into services. So that's why this clause is
4 such a pivotal element of the contract.

5 Now we rely on (m) -- (m)(1), and
6 (m)(1) was enacted in 1994, but that was not the
7 first time the concept that program income goes
8 into the contract was invented.

9 First of all, it is a standard
10 government contracting clause in the OMB
11 regulations. You can go to 2 C.F.R. 200.307, I
12 think it's (e)(2). But, more specifically, the
13 Indian Health Service, in the sample contract
14 that the Indian Health Service had in the 1980s,
15 required that all program income be spent to
16 provide additional services and benefits under
17 the contract.

18 So this was an old concept, not a new
19 concept, that Congress put in there in 1994.
20 Well, why did Congress put it in 1994? I mean,
21 there it was in the sample contract that IHS had
22 because Congress decided that IHS could not be
23 trusted to administer this program at all.

24 That was the positive provision, that
25 program income comes into the contract, but

1 there were a lot of negative provisions in the
2 old sample contract. There were a lot of
3 negative provisions in regulations that IHS had
4 adopted, proposed to adopt in January '94.

5 So Congress comes in, clears the
6 decks, says we are declaring what the master
7 contract is going to say, we are prohibiting a
8 raft of things that the agency proposed in these
9 regulations, but we are cementing the good
10 things.

11 And one of the good things was (m)(1),
12 that all program income had to go to further the
13 general purposes of the contract. So too the
14 question about (a)(2) and (a)(3) and how they
15 relate. They require the administration -- the
16 overhead has to be in connection with the
17 expenditure of -- of -- of -- excuse me, with
18 the administration of the contract.

19 And the contract, as we just saw,
20 requires the spending of program income. So we
21 satisfy (a)(3). It's, of course, part of the
22 federal program that we discussed earlier. The
23 federal program includes direct service spending
24 from the secretarial amount and also program
25 income spending. So -- and IHS spends both

1 tranches of money. The tribe spends both
2 tranches of money.

3 CHIEF JUSTICE ROBERTS: You -- you've
4 heard --

5 MR. MILLER: So it's indisputably part
6 of the federal program.

7 CHIEF JUSTICE ROBERTS: You've heard
8 questions about a situation where the tribe may
9 be spending money on services that go primarily
10 to non-tribal members. What is your principle
11 for limiting that, if there is one?

12 MR. MILLER: Right. Well, of course,
13 as Justice Kavanaugh pointed out, it's not
14 presented in this case, but I will answer the
15 question.

16 The issue of the government's
17 obligation with respect to services to
18 non-beneficiaries has been litigated in another
19 setting. Contract support costs are not the
20 only mandatory spending under the Act. There's
21 also leasing that is mandatory spending. If a
22 tribe uses a tribal facility to run the federal
23 program, then the federal government needs to
24 pay the leasing costs.

25 That issue has been litigated, and the

1 Court have held in the Jamestown case that
2 there's a reasonableness limitation to the
3 leasing costs. Incidentally, reasonableness
4 comes up twice, once in (a)(2), once in (a)(3).
5 So there's a reasonableness limitation on the
6 overhead also. So that's just thing one.

7 CHIEF JUSTICE ROBERTS: Well, but that
8 presumably doesn't have anything to do with the
9 allocation between tribal members and non-tribal
10 members.

11 MR. MILLER: Oh, no. With respect,
12 Your Honor, it would mean in this situation that
13 if there were substantial overhead costs
14 associated with services to non-beneficiaries,
15 then you would discount that element, and IHS
16 would not be responsible for reimbursing it.

17 And I should note that IHS has a
18 mechanism already for doing this. IHS does this
19 in the leasing arena. If I go to IHS and ask
20 for a lease to compensate for the use of a
21 tribal facility, IHS will ask for data, how many
22 non-beneficiaries do you serve? Zero. Then the
23 they cover the whole lease. Fifty percent,
24 which is unheard of, but 50 -- well, there are
25 examples, I suppose, then IHS will whack off a

1 part of the leasing cost to be sure that they
2 are only supporting services to Indians because
3 this is an Indian healthcare program.

4 I also wanted to address the --

5 JUSTICE KAVANAUGH: Can I ask --

6 MR. MILLER: Yes?

7 JUSTICE KAVANAUGH: -- on the question
8 of whether the tribe can use this money for
9 something that IHS itself couldn't use the money
10 for, I think Mr. Unikowsky to Justice Barrett in
11 that last colloquy at the very end noted
12 facility construction, and I wanted to follow up
13 with you on that since you're here on facility
14 construction.

15 If that happened with the use of these
16 -- of the third-party income funds, overhead
17 costs, your answer?

18 MR. MILLER: Right. Thank you, Your
19 Honor. As Mr. Unikowsky indicated, we don't
20 have a separate appropriation for construction.
21 IHS does. That's how they get their
22 construction money --

23 JUSTICE KAVANAUGH: But that --

24 MR. MILLER: -- a quarter of a billion
25 dollars, but --

1 JUSTICE KAVANAUGH: -- that's not a --
2 okay. I'm going to stop you there.

3 MR. MILLER: -- I'm going --

4 JUSTICE KAVANAUGH: I'm going to stop
5 you there. That is not an answer --

6 MR. MILLER: Right.

7 JUSTICE KAVANAUGH: -- to the
8 statutory question that Justice Barrett was
9 posing. That's a -- that's a real-world answer,
10 which is a good real-world answer, but it's not
11 -- I don't think it's a great statutory answer.
12 So keep going.

13 MR. MILLER: I -- I agree with Your
14 Honor that if a -- if a construction activity
15 serves the general purposes of, let's just take
16 the EMS program, then it's under the umbrella.
17 It's within. Let's consider it.

18 So building a garage to house the
19 ambulances or to do maintenance work on the
20 ambulances, Roger. To build a new facility
21 where the ambulance crews were sleeping because
22 they were decrepit and there were -- there were
23 holes in the walls and it was not an acceptable
24 place for ambulance crews to sleep in between
25 calls, so, yes, reconstructing a new facility to

1 house the ambulance crews, absolutely.

2 Are those construction activities
3 things that the tribe can do with the
4 third-party revenue money but that IHS cannot do
5 because it needs permission from Congress? Yes.
6 That is a fact.

7 JUSTICE KAVANAUGH: Yes is the answer
8 to that?

9 MR. MILLER: Yes is that -- is the
10 answer to that question.

11 JUSTICE SOTOMAYOR: Would you ever --

12 JUSTICE KAVANAUGH: And the overhead
13 -- the overhead for that, just to follow up on
14 that, the overhead for that, or maybe you
15 already answered this, I just want to --

16 MR. MILLER: No, but thank you for
17 asking the question. So the overhead on that,
18 just as if you and I hire a --

19 JUSTICE KAVANAUGH: That's what you're
20 seeking, right?

21 MR. MILLER: Yes, but there would be
22 no overhead on it, is what I was about to say,
23 Your Honor. Unless I'm a general contractor
24 building my own house, I hire a company to build
25 a new house. And the tribe hires a company to

1 build that garage. It doesn't build it itself.

2 So the company that hires pays --
3 charges you \$500,000, a million dollars to build
4 that garage. You don't have any overhead. You
5 just procure the contract, but you're not
6 running the contract. So this is why my friend
7 --

8 JUSTICE SOTOMAYOR: Counsel, you're
9 taking a long time to answer the bottom line.

10 MR. MILLER: Yeah. Justice --

11 JUSTICE SOTOMAYOR: Are you going to
12 include any overhead as contract support?

13 MR. MILLER: No.

14 JUSTICE SOTOMAYOR: Thank you.

15 JUSTICE KAVANAUGH: On the question of
16 who's going to pay for this, and the reason I am
17 looking at this is not some kind of fiscal
18 responsibility canon or something, it's just
19 trying to figure out how Congress would have
20 been thinking about this.

21 But, if the discretionary cap stays
22 the same, the money here -- and I asked Mr.
23 Unikowsky this -- the money here will
24 necessarily come from other tribes receiving --
25 who don't provide the healthcare services

1 themselves, where IHS provides the healthcare
2 services directly. That's almost logically
3 necessary, right?

4 MR. MILLER: Well, it -- it --

5 JUSTICE KAVANAUGH: That's not -- that
6 doesn't defeat your argument, but it does
7 perhaps shade how we think about the overall
8 structure of the statute a little bit.

9 MR. MILLER: I would incorporate by
10 reference everything that my -- my friend said,
11 except the answer to that question. CBO will
12 advise the appropriations chairman and
13 chairwoman in the Senate and the House what the
14 man -- what the spending projections are for the
15 next year. So, if Your Honors make a decision
16 here in fiscal year '24 and we're looking at
17 fiscal year '25 or '26, they will make that
18 decision to the appropriate -- they will provide
19 that information to the appropriators. The
20 appropriators then have to divvy up the
21 appropriation in 13 pieces, mindful of what they
22 learned from CBO about all 13 of those.

23 This cost, let's say it goes up \$500
24 million, I have no idea what it would be. There
25 is no data on that. Then that is an element

1 that the appropriations committee decides in
2 allocating the 13.

3 Then, when it gets to the environment
4 and natural resources committee, that committee
5 decides how to further divvy it up among the
6 American Indian Museum and the BIA and the
7 Interior Department and all of its agencies at
8 the Interior Department. There is no way to
9 predict what the ultimate impact would be on the
10 funding of the Indian Health Service, none at
11 all.

12 And to suggest that no, no, it's going
13 to be a dollar for dollar impact on Indian
14 services, it wasn't after the Ramah case.

15 JUSTICE KAVANAUGH: Right.

16 MR. MILLER: That's the best proof.

17 JUSTICE KAVANAUGH: So I think I -- I
18 -- so that's -- a reasonable answer to that
19 question would be, well, you're assuming the
20 discretionary cap would stay the same, but
21 you're wrong. I'm wrong in thinking that the
22 discretionary cap will necessarily stay the same
23 based on the process. That's a predictive
24 judgment you're making.

25 MR. MILLER: Right. And part of it is

1 because the IHS appropriation was an 8 or \$9
2 billion appropriation inside a \$55 billion
3 appropriation which is inside a \$700 billion
4 discretionary appropriation. So there's just no
5 way really to predict that.

6 JUSTICE GORSUCH: How much money are
7 you seeking in this case?

8 MR. MILLER: One million dollars a
9 year, Your Honor, for three years, each of the
10 three-year contract.

11 JUSTICE GORSUCH: For basically EMS
12 services?

13 MR. MILLER: Basically EMS services
14 and some of the suicide prevention and substance
15 abuse programs the tribe has.

16 JUSTICE JACKSON: Did I hear you say
17 that these were three-year contracts? Is that
18 what you --

19 MR. MILLER: Contracts can be three
20 years. These were three-year contracts.

21 JUSTICE JACKSON: With the government?

22 MR. MILLER: Yes.

23 JUSTICE JACKSON: With the IHS?

24 MR. MILLER: Yes. And they're
25 recurring. So, after three years, you sign up

1 for another three years if you want to.

2 JUSTICE JACKSON: And they could be
3 renegotiated at that time?

4 MR. MILLER: Absolutely, absolutely.

5 JUSTICE KAGAN: And what will you do
6 with that \$1 million a year?

7 MR. MILLER: As a contract recovery
8 under the Contract Disputes Act, Your Honor? If
9 that's the question, then that --

10 JUSTICE KAGAN: What -- what services
11 will you provide with that?

12 MR. MILLER: Oh, yes. Well, the --
13 the EMS service -- let's take that again --
14 suffers from being able to hire sufficient
15 personnel. They pay excess overtime, so if they
16 could hire another crew, then they wouldn't be
17 paying that overtime.

18 They would upgrade, constant upgrade I
19 must say, of the ambulances driving on country
20 roads. So they would upgrade ambulances,
21 upgrade equipment in the ambulances, and upgrade
22 the training of the EMT crews. This is just the
23 normal -- normal work of an EMS program. And,
24 most importantly, reduce response times.

25 JUSTICE KAGAN: And do you provide any

1 services to non-Indians?

2 MR. MILLER: No, Your Honor.

3 JUSTICE BARRETT: Can I ask you what I
4 hope is just a simplistic clarifying question.
5 So am I right that both parties agree -- and the
6 government can correct me if this is not the
7 government's position -- that the costs of
8 collecting third-party income fall under
9 5325(a)(1) as part of the secretarial amount and
10 what you're arguing is that the costs of
11 spending the income are contract support costs
12 covered by 5325(a)(2)?

13 MR. MILLER: The -- well, (a)(2), Your
14 Honor, covers overhead. So, with respect to the
15 first half of your question, the cost of
16 providing the EMS program in the first instance
17 --

18 JUSTICE BARRETT: No, no, I understood
19 the third-party income question to be divided
20 into collection and spending --

21 MR. MILLER: Yes.

22 JUSTICE BARRETT: -- and that there
23 was no dispute that collection is covered and
24 that the reason why collection is covered is
25 that it falls under 5325(a)(1) in the

1 secretarial amount and so that what we're trying
2 to find is a home for spending, and you say that
3 home is not 5325(a)(1) but 5325(a)(2)?

4 MR. MILLER: Right. If I may, Your
5 Honor, the -- the program collection activity is
6 an (a)(1) activity.

7 JUSTICE BARRETT: Okay.

8 MR. MILLER: And we can find where the
9 billing operations are spelled out in the
10 contract. Overhead on the program collection
11 activity is an (a)(2) cost. So, even as to the
12 Secretary, there are two buckets funding the
13 tribe.

14 JUSTICE BARRETT: Okay.

15 MR. MILLER: The -- the -- the
16 program, the activity itself and the overhead
17 associated. But (a)(2), like (a)(3), isn't
18 limited to what comes to the tribe under (a)(1).

19 (a)(2) is limited by the terms of the
20 contract, not by the terms of (a)(1). I know
21 the government's brief on page 2, I think, dices
22 and rearranges the words, but the costs are to
23 support the contract and contract compliance
24 costs. So the touchstone for (a)(2), like
25 (a)(3), is what does the contract say?

1 So the overhead that's covered by
2 (a)(2) and (a)(3) is to support anything that's
3 in the contract, and that contract includes
4 spending program income.

5 And with regard to breaking the bank,
6 by the way, you're only talking about an average
7 indirect cost rate around the United States is
8 25 percent, although my client's rate was
9 17 percent. So they lost out on about
10 17 percent of the program income spending they
11 should have had.

12 That's important. But what's really
13 important under the Indian Self-Determination
14 Act is they couldn't do what IHS could have
15 done. And if I could just take a moment, had
16 IHS been in the situation that the tribe was in,
17 running a \$10 million program a year, and IHS
18 had 50 percent program revenue, program income
19 to spend, and then -- and then its own
20 appropriations to spend, 50/50, IHS wouldn't
21 have to take one dime. All of that money would
22 be locally spent to provide care.

23 But when the tribe comes in, if it has
24 a 25 percent indirect cost rate and we had 5
25 million from one source, 5 million from another

1 source, 10 million total, 2 and a half billion
2 dollars required for indirect costs, we have to
3 fund some of that 2 and a half million out of
4 the program revenue that came into the tribe.

5 IHS doesn't have that. They get the
6 benefit of the whole 10 million. And the tribe
7 would get the benefit of the whole 10 million if
8 the overhead were reimbursed on top --

9 JUSTICE BARRETT: But is that part --

10 MR. MILLER: -- but it's not.

11 JUSTICE BARRETT: Is that partly
12 explicable by the fact that, I mean, you know,
13 the tribes aren't the only ones who get
14 third-party payments, like from Medicare,
15 Medicaid or private insurers. That overhead is
16 partly built into that?

17 MR. MILLER: No, the overhead comes in
18 when we -- when we spend the money. I mean, if
19 we spend the money to increase salaries, if we
20 spend the money to add another --

21 JUSTICE BARRETT: No, no, no, but if a
22 hospital got paid, just say not a tribal --

23 MR. MILLER: Yes.

24 JUSTICE BARRETT: -- medical facility.
25 Well, I'll -- I'll finish that you up during the

1 --

2 CHIEF JUSTICE ROBERTS: Thank you --

3 MR. MILLER: But if a hospital got --

4 CHIEF JUSTICE ROBERTS: -- counsel.

5 Go ahead.

6 MR. MILLER: If a hospital got paid
7 Medicare and Medicaid money, the hospital can do
8 anything it wants with it. It's not required --
9 it's not limited by any federal statute in its
10 use of the money. And a doctor the same. If
11 the doctor receives money from Medicare and
12 Medicaid, it can use it to pay the -- the
13 scholarship of its son.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 Justice Thomas?

17 Justice Alito?

18 JUSTICE ALITO: Well, just to follow
19 up on a few questions that were asked earlier,
20 in assessing what Congress thought this whole
21 scheme would amount to, do you think it is
22 illegitimate to consider how much it will cost?

23 MR. MILLER: I -- I don't -- I don't
24 think anything is illegitimate in terms of
25 considering what Congress might have expected,

1 but I -- I do think we have to look at what
2 Congress did in 1994 --

3 JUSTICE ALITO: All right.

4 MR. MILLER: -- in that --

5 JUSTICE ALITO: So it's not
6 illegitimate -- that wasn't an illegitimate line
7 of inquiry. And the government has been accused
8 of making up a number and trying to smuggle it
9 into the case without record support.

10 I take it you disagree with their
11 number?

12 MR. MILLER: Well, I disagree with
13 their number, and today the government said that
14 their number was concocted partially on the
15 assumption that we were talking about overhead
16 associated with services to non-beneficiaries,
17 which we're not.

18 JUSTICE ALITO: Do you have a number?

19 MR. MILLER: We do not have a number.

20 JUSTICE ALITO: Thank you.

21 MR. MILLER: All I know is, for the
22 San Carlos Apache Tribe, it's about a million
23 dollars a year.

24 JUSTICE ALITO: Well, do you think in
25 a case involving the interpretation of the

1 statute, the question is what the statute means
2 and what it will mean as applied to -- in all
3 the instances in which it will be invoked, or
4 just what it would mean in the particular case
5 that happens to come before the Court?

6 MR. MILLER: The question I asked
7 myself is, what did -- what did Congress intend
8 when it enacted the statute because we're bound
9 by the text of the statute. And Congress in
10 1994 said that program income was going to be
11 part of the contract, and it knew that the
12 agency had, for more than a decade, also --

13 JUSTICE ALITO: All right.

14 MR. MILLER: -- said that program
15 income was part of the contract, and it wrote
16 the contract support cost provision to be key to
17 the contract.

18 JUSTICE ALITO: Thank you.

19 MR. MILLER: Thank you, Your Honor.

20 CHIEF JUSTICE ROBERTS: Justice
21 Sotomayor?

22 Justice Gorsuch?

23 Justice Kavanaugh?

24 Justice Barrett?

25 Justice Jackson?

1 Great. Thank you, counsel.

2 MR. MILLER: Thank you.

3 CHIEF JUSTICE ROBERTS: Rebuttal, Ms.
4 Flynn.

5 REBUTTAL ARGUMENT OF CAROLINE A. FLYNN
6 ON BEHALF OF THE PETITIONERS

7 MS. FLYNN: Thank you, Mr. Chief
8 Justice. Just a few points.

9 So, first, I do want to emphasize at
10 the outset that we have been talking a lot today
11 about the funding provisions in 5325(a) and (m)
12 and how those work together, but there is a
13 separate prohibition that does apply,
14 notwithstanding any other provision of law, and
15 that says that IHS cannot pay costs that are not
16 directly attributable to the ISDA contract.

17 Here there is an extended chain of
18 causation. The tribe has to first perform
19 services that are eligible for receiving
20 reimbursements, it then has to collect that
21 money, then decide how to spend that money,
22 which may not even be during the same contract
23 period. And then it has to be the kind of
24 expenditure that generates what would otherwise
25 be an eligible contract support cost. That is

1 too extended of a chain to fit within "directly
2 attributable" and so payment of these funds is
3 independently barred.

4 The second thing I want to address,
5 this question of whether when we're talking
6 about the kind of third-party reimbursement
7 income that can trigger this corresponding
8 contract support cost obligation from IHS, there
9 were questions about whether that kind of income
10 includes income from serving non-beneficiaries
11 or just income from serving Indians.

12 And I took my friend from the Northern
13 Arapaho to say that they do consider the program
14 income they're talking about in this case to
15 include both kinds of reimbursement revenue.
16 That is how I understood the arguments to be in
17 this case thus far.

18 But I also took my friends on the
19 other side to say that you do not have to decide
20 that question about whether the kind of
21 reimbursement income that could potentially
22 trigger CSC from IHS includes income from
23 serving non-Indians. And I would encourage the
24 Court at the very least to reserve that issue
25 and not decide whether that amount of income can

1 include that kind of income stream.

2 There were also questions about our
3 budget estimate in this case, about the
4 repercussions of this case. I do want to
5 clarify that, yes, our estimate is based on --
6 if you base contract support costs on all kinds
7 of third-party reimbursement income that can
8 come in, so it is tied to that, but that
9 estimate is tied to the available information we
10 have.

11 We do not have reliable information
12 about how much third-party reimbursement income
13 tribes are bringing in per year, including
14 whether it comes from serving non-beneficiaries
15 or beneficiaries, because IHS doesn't have
16 reason to collect that information in a
17 comprehensive way. But we can look at the value
18 of the claims that have been made so far, and we
19 can look to how much third-party reimbursement
20 income IHS comes -- brings in, to make
21 estimates.

22 The value of the claims we're seeing
23 so far, we are already facing a claim in the
24 district of Arizona seeking nearly \$110 million
25 in additional contract support costs for a

1 single contract year. We're seeing other claims
2 for 40 million for a single contract year, and
3 90 million for another contract year. In one of
4 those cases, the Gila River case, there's a
5 single fiscal year where the tribe -- what the
6 tribe is saying that they are owed in contract
7 support costs is about \$48 million, and that --
8 that's the total including what they were
9 already paid. And that comes close to what they
10 received in the secretarial amount for that same
11 year, which was \$51 million.

12 So our prediction that this will
13 eventually overtake the secretarial amount we
14 think is sound. And that's in part because of
15 the allegations, like those in the San Carlos
16 Apaches' complaint, that if they had received an
17 additional \$3 million in contract support costs,
18 they would have been able to produce another \$5
19 million in third-party reimbursement income.
20 And that is part of the damages claim that they
21 are seeking against us in this case.

22 I would also say that our estimate
23 about the forward-looking budget impact does not
24 include the value of any of these retrospective
25 judgments that do have a six-year statute of

1 limitations.

2 Finally, just one final point, there's
3 been discussion about what falls within
4 (m)(1) -- sorry -- 5325(m)(1) and what counts as
5 being within the general purposes of the
6 contract. I would -- I understood my friends to
7 be saying it has to be very closely tied to
8 contract services, although there seems to be
9 some expenses like building facilities, which
10 can be done under ISDA but has to be done under
11 a separate ISDA contract if the tribe wants to
12 fund it that way, but they think that they could
13 fund that using third-party reimbursement
14 income.

15 I would say also, though, that (m)(1)
16 has to be read consistently with 1641(d)(2).
17 This is the provision of the IHCIA that also
18 governs the same reimbursement income. And that
19 provision says that tribes can spend it on any
20 healthcare-related purpose or otherwise to
21 achieve the general objectives of the IHCIA.
22 You have to read those consistently. It can't
23 be that (m)(1) permits -- forbids uses that this
24 other provision permits. And so that's why I do
25 think that the -- the idea that tribes are

1 limited to spending this just on program
2 services cannot be correct.

3 If there are no further questions, we
4 ask that you reverse in both cases. Thank you,
5 Your Honor.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 The case is submitted.

9 (Whereupon, at 11:30 a.m., the case
10 was submitted.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official - Subject to Final Review

<p>\$</p> <p>\$1 ^[1] 93:6 \$1.5 ^[1] 68:8 \$10 ^[1] 96:17 \$110 ^[1] 103:24 \$12 ^[3] 63:24 65:12,12 \$2 ^[3] 17:13 63:23 65:10 \$3 ^[1] 104:17 \$48 ^[1] 104:7 \$5 ^[1] 104:18 \$500 ^[1] 90:23 \$500,000 ^[1] 89:3 \$51 ^[1] 104:11 \$55 ^[1] 92:2 \$700 ^[1] 92:3 \$9 ^[1] 92:1</p> <p>1</p> <p>1 ^[1] 33:7 1.8 ^[1] 81:13 10 ^[3] 97:1,6,7 10:03 ^[2] 1:23 4:2 100 ^[4] 56:22 57:9 75:10 77:12 101 ^[2] 3:13 81:18 11:30 ^[1] 106:9 124 ^[2] 79:19,25 125 ^[2] 79:19,25 13 ^[3] 90:21,22 91:2 16 ^[1] 68:8 1623 ^[1] 75:12 1623(b) ^[1] 40:5 1641(d)(2) ^[2] 7:9 105:16 1680 ^[1] 51:12 1680c ^[1] 51:12 17 ^[3] 68:8 96:9,10 1980s ^[1] 82:14 1988 ^[1] 44:19 1994 ^[7] 35:17 36:3 82:6,19,20 99:2 100:10</p> <p>2</p> <p>2 ^[7] 33:3 68:13 74:23 82:11 95:21 97:1,3 20 ^[1] 7:3 200.307 ^[1] 82:11 2010 ^[4] 12:11 34:23,24 67:14 2010s ^[2] 62:11 63:15 2011 ^[2] 66:25 67:7 2012 ^[2] 62:24 67:22 2016 ^[1] 67:3 2017 ^[2] 67:3,4 2024 ^[1] 1:19 23 ^[2] 40:9 70:5 23-250 ^[4] 2:8 3:10 4:4 80:20 23-253 ^[3] 2:6 3:7 42:13 24 ^[1] 90:16 25 ^[4] 1:19 90:17 96:8,24 26 ^[1] 90:17 27 ^[2] 26:23 51:20 29 ^[1] 27:3 29,000 ^[1] 81:14</p>	<p>3</p> <p>3 ^[1] 48:23 35 ^[2] 5:7 34:21</p> <p>4</p> <p>4 ^[1] 3:4 40 ^[2] 33:19 104:2 42 ^[1] 3:7 44 ^[1] 68:13</p> <p>5</p> <p>5 ^[2] 96:24,25 50 ^[2] 85:24 96:18 50/50 ^[1] 96:20 51 ^[3] 29:20 79:12 80:24 52 ^[1] 79:12 53 ^[1] 36:20 532 ^[1] 30:12 5321(g) ^[1] 30:12 5325(a) ^[2] 40:9 101:11 5325(a)(1) ^[4] 36:20 94:9,25 95:3 5325(a)(2) ^[5] 36:25 38:3,5 94:12 95:3 5325(a)(2)(A) ^[1] 38:6 5325(a)(3)(A)(i) ^[1] 43:14 5325(a)(3)(A)(ii) ^[1] 42:20 5325(a)(3)(i) ^[1] 29:3 5325(m) ^[1] 70:24 5325(m)(1) ^[5] 6:17 53:2 62:7 70:6 105:4 5326 ^[3] 21:18 22:7 43:15 54 ^[1] 29:11</p> <p>8</p> <p>8 ^[2] 33:8 92:1 80 ^[1] 3:10 800 ^[4] 17:13 33:3 64:1 68:12</p> <p>9</p> <p>90 ^[1] 104:3 94 ^[2] 44:23 83:4</p> <p>A</p> <p>a)(1) ^[4] 45:11 95:6,18,20 a)(2) ^[18] 44:8,11,20,25 45:10,11,19,20 72:4,14 83:14 85:4 94:13 95:11,17,19,24 96:2 a)(2)(A) ^[4] 37:1,15 38:18,20 a)(2)(B) ^[2] 37:5 38:13 a)(3) ^[12] 44:23 45:6,13 71:16,21 72:4 83:14,21 85:4 95:17,25 96:2 a)(3)(A) ^[1] 44:8 A)(i) ^[1] 75:3 a.m ^[3] 1:23 4:2 106:9 able ^[6] 8:14 10:6 48:3 62:6 93:14 104:18 above-entitled ^[1] 1:21 Absolutely ^[6] 50:12 57:9 77:6 88:1 93:4,4 abuse ^[2] 18:17 92:15</p>	<p>abuses ^[1] 18:11 accept ^[1] 60:22 acceptable ^[1] 87:23 accepting ^[1] 63:22 accomplish ^[1] 36:3 accordance ^[1] 27:15 according ^[1] 16:19 accounting ^[1] 11:14 accurate ^[2] 69:16 78:17 accused ^[1] 99:7 achieve ^[1] 105:21 acknowledge ^[1] 49:23 acres ^[1] 81:14 across ^[2] 35:23 56:16 Act ^[11] 4:11 7:9 34:24 35:6,9 40:18 42:16 60:20 84:20 93:8 96:14 acting ^[7] 40:18 43:10 46:4,6,7 55:18 74:22 action ^[1] 42:4 activities ^[4] 27:6 29:23 45:22 88:2 activity ^[8] 38:23 42:23 58:4 87:14 95:5,6,11,16 actually ^[12] 5:15 19:1 20:8 23:8 35:17 38:20 50:2 58:6,9 62:25 73:14 79:16 ADAM ^[3] 2:5 3:6 42:12 add ^[5] 4:21 22:22 47:23 59:13 97:20 added ^[2] 39:10 44:23 adding ^[1] 45:14 addition ^[1] 35:18 additional ^[8] 6:12 7:17 16:2 21:6 66:15 82:16 103:25 104:17 address ^[6] 23:25 42:4 48:9 71:17 86:4 102:4 addresses ^[1] 71:22 addressing ^[2] 5:8 35:24 adequate ^[1] 44:2 adhering ^[1] 55:17 administer ^[1] 82:23 administered ^[1] 5:7 administering ^[1] 36:4 administration ^[2] 83:15,18 administrative ^[1] 24:10 adopt ^[1] 83:4 adopted ^[2] 17:11 83:4 advanced ^[1] 26:4 advantage ^[1] 18:18 adverb ^[1] 22:23 advise ^[1] 90:12 advocating ^[1] 36:5 affect ^[3] 35:11 72:7,13 affected ^[1] 35:17 Affordable ^[1] 35:6 agencies ^[1] 91:7 agency ^[5] 6:5 16:21 37:9 83:8 100:12 agree ^[18] 14:6,18,23 17:9 44:11 45:17 56:21,22 57:6,19 69:12 71:10 72:3,6,20</p>	<p>81:19 87:13 94:5 agreed ^[4] 12:4 15:7 17:4 27:16 agreeing ^[1] 29:6 agreement ^[6] 20:24 21:1 51:15 53:7,8 69:11 agreements ^[3] 43:21,23 79:8 agrees ^[1] 21:6 ahead ^[2] 19:22 98:5 AL ^[2] 1:4,11 Alito ^[32] 32:3 52:20,23 53:21 54:3,5,16,20 55:4,10,14 62:4,5,13 63:17,21 64:2,10 65:3,9,22 66:3,18 98:17,18 99:3,5,18,20,24 100:13,18 allegations ^[1] 104:15 allocable ^[1] 51:7 allocate ^[1] 50:21 allocated ^[3] 24:12 52:11 76:23 allocating ^[1] 91:2 allocation ^[3] 58:18 71:1 85:9 allow ^[3] 12:6 15:11 69:7 allowed ^[1] 18:19 almost ^[1] 90:2 already ^[5] 66:9 85:18 88:15 103:23 104:9 alternative ^[1] 51:24 although ^[2] 96:8 105:8 ambiguities ^[1] 31:9 ambiguity ^[1] 32:16 ambiguous ^[1] 30:17 ambulance ^[3] 87:21,24 88:1 ambulances ^[5] 87:19,20 93:19,20,21 ambulatory ^[1] 57:1 amend ^[1] 41:18 amendment ^[3] 18:23 41:22 71:16 America ^[1] 56:16 American ^[3] 20:5 60:16 91:6 Americans ^[1] 56:19 amicus ^[1] 60:18 among ^[3] 12:21 60:19 91:5 amount ^[50] 4:21,23 8:12,18 12:5,6 16:21,23 17:12 23:11,14,23 24:2,3,11,16,21,23 25:10,17 28:23 29:7,14,16 30:4,6 33:3 36:22 43:12 45:21 46:9 55:22 59:4,5 61:8 62:21 64:19 65:18 66:9,11,12 71:4 76:13 83:24 94:9 95:1 98:21 102:25 104:10,13 analysis ^[1] 43:11 anchored ^[2] 81:3,9 annual ^[1] 63:22 another ^[10] 39:14 73:8,9 84:18 93:1,16 96:25 97:20</p>	<p>104:3,18 answer ^[25] 21:11 25:25 28:17 31:18 46:12,13 53:22,23 58:5 60:9,9,11 61:23 80:8 84:14 86:17 87:5,9,10,11 88:7,10 89:9 90:11 91:18 answered ^[1] 88:15 answers ^[3] 37:18,18 62:18 ant ^[2] 66:4,4 anticipating ^[1] 71:7 anyway ^[3] 58:20 67:12 69:20 APACHE ^[6] 1:7 4:5 29:10,20 81:12 99:22 Apaches' ^[1] 104:16 apparent ^[1] 24:4 appear ^[1] 22:23 APPEARANCES ^[1] 2:1 appears ^[1] 29:8 Appendix ^[1] 79:8 applicable ^[2] 6:15 33:12 application ^[1] 32:14 applied ^[2] 30:25 100:2 applies ^[5] 6:3 22:11 34:3 43:11 61:1 apply ^[5] 9:18 30:24 37:23 69:16 101:13 applying ^[1] 60:5 approach ^[1] 7:21 appropriate ^[1] 90:18 appropriated ^[5] 4:16 22:3,8 28:23 70:13 appropriation ^[6] 86:20 90:21 92:1,2,3,4 appropriations ^[9] 21:7 58:24 61:8 62:19 67:25 78:14 90:12 91:1 96:20 appropriators ^[2] 90:19,20 ARAPAHO ^[12] 1:14 18:25 27:4 28:4 29:9 43:13 48:16,20 49:1 51:1 52:5 102:13 Arapaho's ^[4] 48:18,22,24 63:9 area ^[2] 64:14 81:15 areas ^[1] 48:5 aren't ^[5] 27:12,14 30:19 38:25 97:13 arena ^[1] 85:19 argue ^[1] 51:5 arguing ^[6] 4:24 16:15 37:13 39:12 41:4 94:10 argument ^[39] 1:22 3:2,5,8,11 4:4,7 5:14 6:25 7:2 11:18 19:5 23:9 26:23 27:9,12 28:10 30:18 37:14 38:5,9 39:23 42:12 44:19 46:11,21 48:2,11,18 51:10,20,21,24,24 52:14 57:25 80:19 90:6 101:5 arguments ^[3] 18:9 59:16</p>
--	---	---	--	---

Official - Subject to Final Review

<p>102:16 arise ^[1] 43:18 arises ^[1] 42:1 Arizona ^[1] 103:24 arose ^[1] 46:12 around ^[1] 96:7 articulation ^[1] 31:8 aside ^[3] 10:13 52:20,23 assessing ^[1] 98:20 assets ^[1] 9:4 Assistant ^[1] 2:2 associated ^[6] 21:22 25:9 43:20 85:14 95:17 99:16 assume ^[2] 17:14 50:20 assumes ^[2] 8:15 21:11 assuming ^[2] 61:7 91:19 assumption ^[3] 65:16 76:16 99:15 attached ^[1] 47:16 attorneys ^[1] 62:14 attributable ^[9] 6:2 22:10, 12,16,20,25 43:17 101:16 102:2 authority ^[3] 7:5 35:20 41:20 available ^[5] 12:17,21 18:20 44:2 103:9 average ^[2] 20:5 96:6 awarded ^[2] 29:14 81:11 aware ^[4] 35:12 36:9,10,13</p> <p style="text-align: center;">B</p> <p>back ^[4] 8:3 26:21 30:3 58:7 back-and-forth ^[1] 75:20 background ^[2] 35:13 36:13 baked ^[1] 69:5 balloon ^[1] 40:21 ballooning ^[1] 42:1 bank ^[2] 35:23 96:5 bar ^[1] 6:5 barred ^[1] 102:3 BARRETT ^[56] 19:19,22 23:6,16,21 24:22 25:2 26:2 36:17,18,24 37:5,12 38:1,14,16,25 39:18,25 46:14 52:21 72:11,12 73:5,9,12, 16,20 74:3,18,24 75:4,7,18 76:1,11 77:2,7,10,18 78:4, 19,23 79:1 86:10 87:8 94:3,18,22 95:7,14 97:9,11,21, 24 100:24 Barrett's ^[1] 80:8 barrier ^[1] 43:15 base ^[3] 58:10 78:22 103:6 based ^[5] 46:10 65:15 66:14 91:23 103:5 basic ^[2] 4:15 62:17 basically ^[2] 92:11,13 basis ^[2] 65:20 70:25 became ^[2] 12:12 67:15 BECERRA ^[3] 1:3,10 4:5 becomes ^[1] 67:19</p>	<p>becoming ^[1] 17:1 begin ^[1] 80:23 beginning ^[1] 21:4 behalf ^[12] 2:3,6,7 3:4,7,10, 13 4:8 25:24 42:13 80:20 101:6 behavioral ^[1] 52:8 believe ^[11] 8:6 10:23 16:15 21:8,19 28:1 30:22 32:9,19,20 33:17 beneficiaries ^[5] 9:11 10:17 17:25 27:23 103:15 benefit ^[8] 4:15 30:14 31:10 48:5 49:3 59:25 97:6,7 benefits ^[2] 56:16 82:16 best ^[1] 91:16 between ^[6] 27:22 28:11 35:25 64:7 85:9 87:24 BIA ^[1] 91:6 big ^[2] 17:3 41:25 bigger ^[1] 66:6 biggest ^[1] 59:16 bill ^[2] 63:24 65:11 billing ^[4] 25:8,16 81:21 95:9 billion ^[15] 17:13 33:3,8,9 63:23,24 65:11,12,12 68:13 86:24 92:2,2,3 97:1 bit ^[6] 53:13 61:24 72:8,13 79:23 90:8 Blackfeet ^[1] 31:12 blood ^[2] 49:2 77:14 Board ^[1] 60:15 Both ^[12] 34:9 43:4 60:16, 17 72:2 76:20,20 83:25 84:1 94:5 102:15 106:4 bottom ^[1] 89:9 bound ^[2] 30:19 100:8 branch ^[1] 73:23 breaking ^[1] 96:5 brief ^[9] 8:8 26:24 31:23 37:18,19 68:13 69:2 78:17 95:21 briefs ^[3] 37:3 58:7 60:18 bring ^[2] 10:4 65:1 bringing ^[4] 20:7,8 63:16 103:13 brings ^[2] 8:13 103:20 broad ^[2] 52:5 76:6 broaden ^[2] 52:14 76:2 broadly ^[1] 81:7 brought ^[4] 22:21 63:2 66:25 67:12 buckets ^[1] 95:12 budget ^[4] 33:16,20 103:3 104:23 build ^[9] 8:24 10:12 53:20 58:14 87:20 88:24 89:1,1, 3 building ^[8] 25:21 49:4 53:16 58:1,14 87:18 88:24 105:9 buildings ^[2] 56:13 58:2 built ^[2] 8:20 97:16</p>	<p>bulk ^[2] 9:25 42:18 bunch ^[1] 58:15 buzz ^[1] 31:7</p> <p style="text-align: center;">C</p> <p>C.F.R ^[1] 82:11 calculating ^[1] 58:10 call ^[1] 8:9 calling ^[2] 22:20 30:23 calls ^[3] 31:15 32:13 87:25 came ^[4] 1:21 15:19 48:10 97:4 cannot ^[10] 8:25 21:21 22:8 37:13 77:12 81:4,6 88:4 101:15 106:2 canon ^[8] 30:24,25 31:8,11, 15 32:14 81:8 89:18 cap ^[6] 34:2,17 60:25 89:21 91:20,22 capable ^[1] 22:21 caps ^[4] 33:11,17 62:19 67:25 Care ^[9] 7:9 16:9 18:20 34:24 35:6 57:2,2,5 96:22 CARLOS ^[7] 1:7 29:10,19 48:13 81:12 99:22 104:15 Carlos's ^[1] 79:16 CAROLINE ^[5] 2:2 3:3,12 4:7 101:5 carried ^[2] 4:14 45:23 carries ^[1] 43:6 carry ^[1] 12:4 carrying ^[1] 75:1 Case ^[45] 4:4 6:25 13:16 15:16 19:9 35:14 36:6 42:3, 18,25 43:16 49:25 51:3,5, 16 55:7 61:2 62:22,23 64:1,3 65:15,21 67:3 68:7 70:10 74:7 77:24 78:1 81:2 84:14 85:1 91:14 92:7 99:9,25 100:4 102:14,17 103:3,4 104:4,21 106:8,9 cases ^[10] 14:1,17 31:1,11 56:13 62:21 64:20 66:11 104:4 106:4 categories ^[3] 44:24 45:9 79:14 causation ^[2] 22:12 101:18 caused ^[1] 22:22 causing ^[1] 35:1 CBO ^[2] 90:11,22 cementing ^[1] 83:9 central ^[2] 49:6 56:17 certain ^[3] 59:4,5,9 certainly ^[2] 16:24 64:20 chain ^[2] 101:17 102:1 chairman ^[1] 90:12 chairwoman ^[1] 90:13 challenge ^[1] 62:9 change ^[7] 5:17 17:3 35:1, 11,17 41:4 60:25 changed ^[4] 12:11 13:4 34:23 63:15</p>	<p>changes ^[1] 35:16 changing ^[2] 33:24 40:16 chapter ^[3] 45:8 62:23 68:2 charges ^[1] 89:3 checked ^[1] 49:3 Cherokee ^[1] 62:22 Chickasaw ^[1] 31:12 CHIEF ^[34] 4:3,9 7:20,25 8:11 9:2,17 31:17,25 32:24 36:16 40:1 42:9,14 47:22 50:7,18 62:1 66:19 72:10 79:2 80:15,18,21 84:3,7 85:7 98:2,4,14 100:20 101:3,7 106:6 choice ^[4] 32:11,12,17 63:7 choices ^[1] 32:10 choose ^[1] 39:3 chronically ^[2] 44:3,22 circles ^[1] 78:7 citation ^[1] 69:8 cite ^[1] 68:14 claim ^[3] 75:22 103:23 104:20 claims ^[3] 103:18,22 104:1 clarification ^[1] 45:15 clarify ^[6] 18:16 19:12 28:15 36:24 44:23 103:5 clarifying ^[1] 94:4 clause ^[3] 81:19 82:3,10 clear ^[7] 21:12 32:5 41:23 44:17 45:16 52:13 79:5 clears ^[1] 83:5 client ^[2] 57:21 68:5 client's ^[1] 96:8 clinic ^[3] 49:2,7 53:20 clinical ^[1] 57:3 clinics ^[1] 77:16 close ^[3] 47:14 56:8 104:9 closely ^[1] 105:7 colleagues ^[1] 32:9 collect ^[18] 5:3 13:5,6,12, 21 26:2 43:1,4 46:5 50:15 62:6 63:7,10 67:16 75:11, 14 101:20 103:16 collecting ^[6] 23:12 24:24 46:2 50:2 77:19 94:8 collection ^[7] 24:3 25:8 94:20,23,24 95:5,10 collects ^[2] 23:17 49:23 colloquy ^[1] 86:11 come ^[12] 31:4,7 33:19 34:1 40:23 55:1 58:21 63:12 64:8 89:24 100:5 103:8 comes ^[20] 20:17 25:17 29:18 31:10 38:22 39:11 64:5 69:23 70:13,16 71:1 82:25 83:5 85:4 95:18 96:23 97:17 103:14,20 104:9 coming ^[5] 35:2 36:12 37:2 82:1,2 command ^[1] 6:1 committee ^[4] 33:12 91:1,</p>	<p>4,4 common ^[3] 30:24 31:15,22 communities ^[1] 44:4 community ^[1] 57:5 comp ^[4] 37:3 38:22 73:6,18 company ^[3] 88:24,25 89:2 compensate ^[1] 85:20 compensation ^[1] 39:10 complaint ^[1] 104:16 complete ^[2] 11:3 78:6 completely ^[3] 61:9 69:4 80:6 compliance ^[6] 10:11 11:4 23:20 45:24 72:25 95:23 compliant ^[2] 10:20 11:12 complicated ^[1] 23:7 component ^[1] 5:21 comprehensive ^[1] 103:17 concept ^[3] 82:7,18,19 concern ^[1] 40:22 concerned ^[2] 71:2,13 concerns ^[3] 16:9 36:8 48:3 concession ^[1] 77:3 concocted ^[1] 99:14 condition ^[1] 11:19 conditions ^[1] 6:15 confusion ^[1] 24:22 Congress ^[48] 5:14 8:20 9:21 10:23 11:20 18:18 21:7 31:3,13 32:18 33:15,23 34:5 35:6,10,24 36:2,8 41:22, 23,23 42:3,5 44:19,23 45:1 55:24 58:23 59:2 60:16,24 66:3 68:1 71:2,4,12 76:18 82:19,20,22 83:5 88:5 89:19 98:20,25 99:2 100:7,9 Congress's ^[3] 5:25 22:1,2 conjunction ^[1] 47:2 connection ^[3] 42:22 71:24 83:16 consequences ^[2] 59:17 65:23 consider ^[5] 49:24 78:21 87:17 98:22 102:13 considered ^[1] 11:21 considering ^[1] 98:25 consist ^[1] 45:21 consistent ^[4] 7:8 13:23 15:21 22:1 consistently ^[2] 105:16,22 constant ^[1] 93:18 constraint ^[1] 48:1 constraints ^[1] 37:22 construction ^[15] 10:2 30:11 31:4 58:9,23 59:2,22 78:10,25 86:12,14,20,22 87:14 88:2 construe ^[1] 30:20 construed ^[7] 30:13 31:9</p>
--	---	--	--	---

Official - Subject to Final Review

<p>51:16 53:15,19 59:25 71:12</p> <p>consultant ^[1] 20:17</p> <p>context ^[3] 5:5 31:20 33:4</p> <p>contexts ^[1] 33:22</p> <p>contextualized ^[1] 33:5</p> <p>continue ^[1] 29:12</p> <p>contract ^[168] 4:22 5:2,8,13,16,18,22 6:3,23 7:1,5,18 11:22,23 12:1,3 13:24 14:5 15:4,8,17,22 16:3,20 18:1,15 20:11,18,19,20 21:14,15,22 22:14,18 24:19 25:13 26:8,24 28:2 29:3,5,8,8,10,15,18,20,21,25,25 33:7,9,14 34:9 35:19,25 36:11 37:13 38:2 39:4,15 40:11,17 41:5,7,16,17 42:17,24 43:3,9,10,12,17,19 45:6,25 46:1,5,20 47:3,8,12,20 52:1,18 53:2,4,6,7,24 54:9,9,24 55:19,25 56:20,25 57:21 58:11 59:10,13,23,24 62:20,25 63:9,9 64:17 66:10 68:5 71:17,22 72:24 75:17,21,23 76:6 77:20 79:5,8,16 81:12 82:4,8,13,17,21,25 83:2,7,13,18,19 84:19 89:5,6,12 92:10 93:7,8 94:11 95:10,20,23,23,25 96:3,3 100:11,15,16,17 101:16,22,25 102:8 103:6,25 104:1,2,3,6,17 105:6,8,11</p> <p>contracted ^[3] 14:15 15:11,24</p> <p>contracting ^[4] 17:7 73:3 74:14 82:10</p> <p>contractor ^[11] 29:11 30:5 40:18 45:24 46:4,7,8 60:1,2 74:23 88:23</p> <p>contractor's ^[1] 60:4</p> <p>contracts ^[13] 4:13 13:25 20:16 21:25 22:10 28:3 33:22 40:25 41:11 67:9 92:17,19,20</p> <p>contractual ^[8] 11:19 27:2,7,16 43:8 55:17 67:16 75:1</p> <p>conversation ^[1] 64:7</p> <p>core ^[1] 4:21</p> <p>correct ^[15] 23:15 26:6 32:12,18 33:25 37:10 38:11 56:7 57:18 63:20 70:3,18 71:5 94:6 106:2</p> <p>correctly ^[1] 26:1</p> <p>corresponding ^[1] 102:7</p> <p>cost ^[30] 5:19 11:24 16:3,20 24:20 26:9 29:25 33:7 36:11 41:1 45:22 58:8,10,10,18 68:17 69:15 72:4,5 74:2 86:1 90:23 94:15 95:11 96:7,24 98:22 100:16 101:25 102:8</p>	<p>costing ^[1] 19:24</p> <p>costs ^[89] 4:22 5:8,21 6:1,6 11:22,25 15:17 18:1 20:12 21:21 22:9 23:10,12 24:3,5,14,24 25:3,8,11 26:5,14,25 33:10,14 34:10 37:14 38:2,3,7 39:1,6,15 40:21 41:7 42:18,19,19,21,24 43:13,16,17,21 44:24 45:6,7,21 58:11,16,20 59:13 62:20 63:1,11,22 64:18 66:10 68:6 70:16 71:18,23,24 73:14,14,15 74:8 75:17,23 77:19,20 78:25 84:19,24 85:3,13 86:17 94:7,10,11 95:22,24 97:2 101:15 103:6,25 104:7,17</p> <p>couldn't ^[7] 33:24 38:2 62:20 67:12 77:7 86:9 96:14</p> <p>Counsel ^[16] 12:8 19:19,20,23 23:5,6 32:1,23 42:10 62:2 80:16 89:8 98:4,15 101:1 106:7</p> <p>count ^[2] 37:13 38:7</p> <p>country ^[2] 64:25 93:19</p> <p>counts ^[2] 26:8 105:4</p> <p>couple ^[2] 59:21 81:15</p> <p>course ^[4] 28:7,12 83:21 84:12</p> <p>COURT ^[19] 1:1,22 4:10 16:14 18:2 31:1,11 42:15 51:17 60:3 62:22,24 69:8,13,16 80:22 85:1 100:5 102:24</p> <p>Court's ^[5] 6:8 30:25 31:7 44:5 68:1</p> <p>courts ^[2] 17:23 30:23</p> <p>cover ^[3] 4:23 24:4 85:23</p> <p>coverage ^[1] 25:6</p> <p>covered ^[7] 44:21,21 69:10 94:12,23,24 96:1</p> <p>covers ^[2] 73:1 94:14</p> <p>created ^[1] 42:6</p> <p>creating ^[1] 68:21</p> <p>crew ^[1] 93:16</p> <p>crews ^[4] 87:21,24 88:1 93:22</p> <p>cross-reference ^[2] 7:4 45:10</p> <p>cross-references ^[1] 35:20</p> <p>CSC ^[2] 34:9 102:22</p> <p>current ^[1] 33:6</p> <p>cut ^[1] 33:24</p> <p>cuts ^[2] 33:15 40:23</p> <p>cycles ^[2] 68:22 69:2</p>	<p>decade ^[1] 100:12</p> <p>decades ^[1] 36:4</p> <p>decide ^[7] 9:10 18:19 33:21 65:21 101:21 102:19,25</p> <p>decided ^[4] 9:16 17:23 65:15 82:22</p> <p>decides ^[2] 91:1,5</p> <p>deciding ^[2] 25:11 26:8</p> <p>decision ^[5] 10:13 41:15 68:1 90:15,18</p> <p>decisions ^[1] 25:20</p> <p>decks ^[1] 83:6</p> <p>declaring ^[1] 83:6</p> <p>decrepit ^[2] 56:12 87:22</p> <p>dedicate ^[1] 23:19</p> <p>deduct ^[5] 58:9,20 71:13,14 78:24</p> <p>deemed ^[2] 44:24 51:14</p> <p>defeat ^[1] 90:6</p> <p>defend ^[1] 51:5</p> <p>defer ^[1] 7:12</p> <p>define ^[2] 39:20 40:3</p> <p>defined ^[1] 40:8</p> <p>definition ^[1] 37:15</p> <p>degree ^[1] 80:5</p> <p>deliberately ^[1] 10:25</p> <p>delineated ^[1] 30:4</p> <p>demands ^[1] 81:19</p> <p>dental ^[5] 52:7 53:18 57:5 81:5,5</p> <p>dentist ^[1] 77:15</p> <p>Department ^[3] 2:3 91:7,8</p> <p>depending ^[1] 50:22</p> <p>depriving ^[1] 59:18</p> <p>described ^[1] 17:16</p> <p>description ^[1] 42:25</p> <p>design ^[1] 4:15</p> <p>designates ^[1] 5:20</p> <p>despite ^[1] 40:4</p> <p>determination ^[1] 27:24</p> <p>determine ^[3] 5:15 11:22 16:20</p> <p>detours ^[1] 56:6</p> <p>dices ^[1] 95:21</p> <p>dictates ^[1] 32:17</p> <p>difference ^[1] 10:24</p> <p>different ^[11] 10:18 12:16 17:14 19:3 20:21 28:11 31:13 52:9 60:11 78:1 80:6</p> <p>differently ^[5] 9:23 50:22 76:10,17,23</p> <p>dime ^[1] 96:21</p> <p>diminish ^[1] 18:20</p> <p>diminution ^[1] 49:19</p> <p>direct ^[5] 33:20 43:12 59:18 73:15 83:23</p> <p>direction ^[2] 7:22 47:23</p> <p>directly ^[10] 6:2 16:19 22:10,23 43:17 44:7 61:3 90:2 101:16 102:1</p> <p>disagree ^[5] 8:6 22:5 66:2 99:10,12</p> <p>discount ^[1] 85:15</p> <p>discretion ^[4] 46:25 53:14</p>	<p>76:4,7</p> <p>discretionary ^[11] 33:10,11,17 34:1,13,15 60:25 89:21 91:20,22 92:4</p> <p>discussed ^[1] 83:22</p> <p>discussion ^[1] 105:3</p> <p>dismiss ^[1] 81:2</p> <p>dispute ^[5] 23:12 25:5 36:11 74:20 94:23</p> <p>disputed ^[5] 13:14 42:17,19,24 72:22</p> <p>disputes ^[3] 44:20 55:7 93:8</p> <p>disputing ^[2] 72:23 74:22</p> <p>distance ^[1] 49:6</p> <p>distinction ^[1] 10:5</p> <p>distinguishing ^[2] 27:22 28:10</p> <p>district ^[1] 103:24</p> <p>divided ^[1] 94:19</p> <p>divvy ^[2] 90:20 91:5</p> <p>doctor ^[2] 98:10,11</p> <p>doing ^[7] 21:15 52:24 73:24 74:15 76:24 77:1 85:18</p> <p>DOJ ^[1] 37:6</p> <p>dollar ^[4] 76:9,17 91:13,13</p> <p>dollars ^[8] 52:10 68:10 76:22 86:25 89:3 92:8 97:2 99:23</p> <p>done ^[7] 34:6 51:1 77:25 78:20 96:15 105:10,10</p> <p>door ^[1] 53:16</p> <p>drawing ^[1] 71:18</p> <p>drive ^[1] 49:5</p> <p>driving ^[1] 93:19</p> <p>during ^[3] 25:12 97:25 101:22</p> <p>duty ^[1] 13:12</p>	<p>employees ^[1] 48:21</p> <p>EMS ^[10] 14:1,17 80:25 81:20 87:16 92:11,13 93:13,23 94:16</p> <p>EMT ^[1] 93:22</p> <p>enable ^[2] 8:21 10:3</p> <p>enacted ^[7] 29:19 35:6 44:19 71:16,17 82:6 100:8</p> <p>enactment ^[1] 71:21</p> <p>encountering ^[1] 63:11</p> <p>encourage ^[1] 102:23</p> <p>end ^[1] 86:11</p> <p>English ^[1] 58:12</p> <p>enough ^[2] 56:8,10</p> <p>enroll ^[2] 12:23 13:9</p> <p>ensure ^[3] 11:3 45:24 72:25</p> <p>ensured ^[1] 59:3</p> <p>ensuring ^[1] 44:1</p> <p>enter ^[3] 4:12 33:21 67:9</p> <p>entire ^[1] 25:5</p> <p>entitled ^[3] 48:6 62:25 67:24</p> <p>entitles ^[2] 42:16 47:17</p> <p>enumerated ^[11] 27:1,6 45:9 47:8,9,13 52:2 53:9 56:25 79:9,14</p> <p>environment ^[1] 91:3</p> <p>equipment ^[1] 93:21</p> <p>escalations ^[1] 41:1</p> <p>ESQ ^[4] 3:3,6,9,12</p> <p>ESQUIRE ^[2] 2:5,7</p> <p>essential ^[1] 45:18</p> <p>essentially ^[1] 58:13</p> <p>estimate ^[8] 17:10 64:5 65:10 68:16 103:3,5,9 104:22</p> <p>estimates ^[2] 69:14 103:21</p> <p>ET ^[2] 1:4,11</p> <p>even ^[20] 5:23 6:6 10:13 14:14 22:5 25:12 48:14 56:8,9 62:20 66:6 67:9 69:10 72:7,21 78:20 81:6,24 95:11 101:22</p> <p>eventually ^[2] 5:19 104:13</p> <p>everybody ^[1] 73:6</p> <p>everything ^[1] 90:10</p> <p>evidence ^[1] 69:7</p> <p>exact ^[4] 31:14 71:15,21 74:9</p> <p>exactly ^[4] 27:19 53:1 61:21 76:25</p> <p>example ^[7] 14:16 37:2,6 53:14 73:1,18 74:13</p> <p>examples ^[2] 31:23 85:25</p> <p>exceeding ^[1] 64:18</p> <p>excellent ^[1] 62:14</p> <p>Except ^[2] 24:22 90:11</p> <p>excess ^[2] 29:13 93:15</p> <p>exchange ^[4] 4:18 12:4 29:6 30:6</p> <p>excluding ^[1] 17:24</p> <p>excuse ^[3] 47:5 79:18 83:17</p>
--	--	---	--	---

Official - Subject to Final Review

<p>exempted ^[1] 10:25 expand ^[2] 14:25 48:4 expansion ^[1] 11:3 expected ^[1] 98:25 expenditure ^[4] 24:5 29:13 83:17 101:24 expenditures ^[2] 5:1 75:23 expense ^[3] 39:10,11,14 expenses ^[8] 37:17,19 38:21,21,22 39:9 57:25 105:9 explain ^[2] 48:16 72:18 explanation ^[1] 62:12 explicable ^[1] 97:12 explode ^[1] 33:14 explored ^[1] 40:22 express ^[1] 5:25 extended ^[3] 23:3 101:17 102:1 extent ^[4] 12:5 18:10 30:16 59:8 extra ^[1] 15:17 extreme ^[1] 66:16 extremely ^[1] 64:21</p> <hr/> <p>F</p> <p>facilities ^[5] 10:2 53:16 77:15 78:13 105:9 facility ^[10] 23:19 25:22 78:10 84:22 85:21 86:12,13 87:20,25 97:24 facing ^[1] 103:23 fact ^[6] 27:5 35:19 40:4 72:21 88:6 97:12 facts ^[1] 63:14 fairly ^[1] 20:8 fall ^[4] 23:13 54:23 74:8 94:8 falls ^[3] 33:10 94:25 105:3 far ^[4] 74:20 102:17 103:18, 23 favor ^[4] 30:21 32:10 43:24 47:24 feature ^[1] 81:1 federal ^[22] 4:13,17 5:18 11:25 12:2 26:9,15 28:22 29:2 30:2 39:16 40:10,16 42:22 71:25 78:12 83:22, 23 84:6,22,23 98:9 feeling ^[2] 60:19 63:6 few ^[2] 98:19 101:8 Fifty ^[1] 85:23 fight ^[1] 15:25 figure ^[2] 41:15 89:19 final ^[1] 105:2 Finally ^[2] 43:24 105:2 financing ^[1] 9:4 find ^[3] 33:15 95:2,8 fine ^[1] 51:8 finish ^[3] 28:16 31:17 97:25 first ^[31] 4:4 8:22 9:8 10:8 11:5 22:6 23:18 25:14 28:17 38:24 39:8 42:7 46:10</p>	<p>48:11,12,17 59:21 61:23 62:8 63:23 64:1,4 65:11 69:8 76:12 82:7,9 94:15, 16 101:9,18 first-line ^[1] 44:19 fiscal ^[4] 89:17 90:16,17 104:5 fit ^[3] 72:16,17 102:1 five ^[1] 68:9 flexibilities ^[2] 8:20 18:18 flexibility ^[5] 8:23 9:21 11:15 41:4 76:21 flowing ^[2] 11:10,11 FLYNN ^[93] 2:2 3:3,12 4:6, 7,9 6:11,14,21 7:2,24 8:5, 12 9:7,20 10:16,23 11:7,13 12:9,15,21,25 13:8,14,18 14:3,6,9,12,18,21 15:12,15, 25 16:7,13 17:9,18,22 18:5, 16,24 19:12,15,18 21:2,17 22:19 23:3,15,18 24:7 25:1,7 26:6,16,18 27:8,18,21 28:15,19 30:22 31:6,19 32:7,13,20 33:6 34:2,9,14,18 35:5 36:10,23 37:4,11,25 38:11,15,19 39:5,22 40:7 41:3,14,20 42:2 101:4,5,7 focus ^[1] 52:24 focused ^[2] 41:24 60:4 follow ^[4] 32:17 86:12 88:13 98:18 following ^[1] 29:22 forbids ^[1] 105:23 force ^[1] 9:18 forced ^[1] 22:18 formula ^[1] 58:3 forth ^[1] 58:7 forward-looking ^[1] 104:23 found ^[1] 16:14 free ^[1] 15:2 friend ^[4] 18:24 89:6 90:10 102:12 friendly ^[1] 18:23 friends ^[2] 102:18 105:6 frolic ^[1] 80:5 frolics ^[1] 56:6 front ^[1] 26:24 fulfilling ^[1] 43:8 full ^[3] 9:18 34:25 57:13 function ^[3] 16:25 25:16 42:23 functions ^[2] 24:10 29:22 fund ^[5] 27:1 50:16 97:3 105:12,13 funded ^[4] 28:22 30:7 39:13 74:11 funding ^[32] 5:13,22 8:1 12:6 21:8 22:4 29:22 30:7 33:3,8,10,11,18 34:1,4,5,8,8 35:11,25 39:17 40:9,14 42:7 45:8 49:11 55:23 60:25 61:2 91:10 95:12 101:11 funds ^[24] 4:16,18 5:1 11:2</p>	<p>12:17,22 13:13 21:21 22:1, 3,8 24:17,20 25:12,19 28:23 29:13,14 39:2 58:4 78:5 79:13 86:16 102:2 further ^[11] 6:22 32:2 34:22 39:3 43:9,25 53:25 76:5 83:12 91:5 106:3 furthering ^[1] 47:11 furtherers ^[1] 75:20</p> <hr/> <p>G</p> <p>gamut ^[1] 57:13 gaps ^[1] 4:22 garage ^[8] 87:18 89:1,4 gave ^[1] 9:21 gee ^[1] 65:14 General ^[44] 2:2 6:22 13:24 14:4 15:7,21 27:13 39:4 43:9 47:1,12,16,16,19 52:18 53:1,4,5,12,15,24 54:8, 10,24 55:8,11,21 56:20 57:1,22 60:2 68:21 70:19 75:20 76:5 78:15 79:22 80:3 81:6 83:13 87:15 88:23 105:5,21 generally ^[6] 47:4,5 53:15 55:9 61:1,23 generate ^[1] 58:16 generates ^[1] 101:24 generously ^[1] 81:7 gets ^[3] 55:22 74:4 91:3 getting ^[8] 8:2 9:3,18 25:19 35:23 59:10 66:10 67:23 Gila ^[1] 104:4 give ^[3] 46:25 52:15 53:22 gives ^[3] 30:11 41:6 53:13 giving ^[1] 64:8 GORSUCH ^[53] 12:8,10,19, 24 13:2,10,17,20 14:4,7,10, 13,20,23 15:13,20 16:5,8, 24 17:15 22:16 25:25 26:11,17,20 27:11,19 28:18, 20 32:25 34:22 56:2,4,9,24 63:4 66:22,23 67:4,6,11,14, 18 68:4,9,12,19,24 69:6,18 92:6,11 100:22 got ^[8] 26:23 47:19 61:22 66:24 68:2 97:22 98:3,6 government ^[33] 8:4 9:6 15:6,10 17:7 18:10 20:18, 21,24 26:15 27:17 37:9 41:12 51:4 58:1 59:8,15 63:21 64:16 65:8 69:14 72:23 73:23 74:5,20 78:1,12 82:10 84:23 92:21 94:6 99:7, 13 government's ^[8] 5:18 16:9 39:19 49:18 81:1 84:16 94:7 95:21 government-wide ^[1] 33:11 governs ^[2] 7:10 105:18 grant ^[1] 17:3</p>	<p>great ^[2] 87:11 101:1 greater ^[1] 8:23 ground ^[2] 51:6 63:15 grow ^[3] 9:22 10:3 16:21 grown ^[1] 16:25 GSA ^[2] 73:3 74:14 guess ^[2] 6:25 25:7</p> <hr/> <p>H</p> <p>half ^[7] 9:14,15 48:13,17 94:15 97:1,3 handling ^[3] 74:1,15,16 happen ^[2] 25:12 65:6 happened ^[4] 64:19 66:25 70:11 86:15 happens ^[3] 67:19 76:13 100:5 head-on ^[1] 48:9 HEALTH ^[27] 1:4,11 4:12, 13 7:9 14:5,7 15:8,9 21:5 26:4 27:14 34:24 52:8 53:25 54:13 57:3,5 58:19,25 60:15 81:6,11,18 82:13,14 91:10 healthcare ^[38] 7:15 8:2 16:11 17:6 20:4,6,7,9 25:22 35:9 43:1,2,5,6 44:3 46:6 47:4,19 48:4,22 49:12,19 56:10,15 57:13 61:4 70:3, 8,15 73:22 76:8,22,25 77:4, 13 86:3 89:25 90:1 healthcare-related ^[3] 7:12 10:7 105:20 hear ^[2] 4:3 92:16 heard ^[3] 79:7 84:4,7 held ^[1] 85:1 help ^[2] 11:22 15:1 HHS ^[2] 8:13,15 hid ^[1] 66:3 high ^[1] 64:15 hill ^[1] 66:4 hinge ^[1] 37:14 hinges ^[1] 41:15 hip ^[1] 71:20 hire ^[6] 37:8 73:19 88:18,24 93:14,16 hires ^[2] 88:25 89:2 hiring ^[1] 58:13 historically ^[1] 50:25 hold ^[2] 55:16 62:24 hole ^[2] 66:5,8 holes ^[2] 66:6 87:23 home ^[2] 95:2,3 Honor ^[29] 8:6 16:1 21:3 27:9 38:12 44:9,16 54:4 55:7,13 56:8,23 57:8 60:22 62:12 65:7 69:5 72:21 85:12 86:19 87:14 88:23 92:9 93:8 94:2,14 95:5 100:19 106:5 Honor's ^[2] 21:18 24:8 Honors ^[1] 90:15 hope ^[1] 94:4 horribles ^[1] 16:10</p>	<p>hospital ^[4] 97:22 98:3,6,7 hours ^[1] 81:15 house ^[5] 87:18 88:1,24,25 90:13 HR ^[2] 73:22,24 HUMAN ^[3] 1:4,11 73:3 hurt ^[1] 61:15 hypo ^[1] 8:7 hypothetical ^[1] 65:18</p> <hr/> <p>I</p> <p>idea ^[2] 90:24 105:25 identified ^[1] 60:22 ignore ^[1] 38:4 IHCIA ^[2] 105:17,21 IHS ^[90] 4:14,16,21,25 5:2, 16 6:1 8:16,25 9:11,23,24 10:8,12 11:15 12:18 13:19 17:2 21:5,21,23 23:16,17 24:6 26:2,12,13 28:24 34:3 36:4 37:7 40:5 42:25 43:3 44:22 47:9 49:9 53:10 58:8 61:1,3 64:7 68:16 70:13 71:1,4,13 73:22 74:6,14 75:8,8,11,24 76:4,6,10,17, 20 77:1,5 78:6,11 81:23 82:21,22 83:3,25 85:15,17, 18,19,21,25 86:9,21 88:4 90:1 92:1,23 96:14,16,17, 20 97:5 101:15 102:8,22 103:15,20 IHS's ^[7] 22:3,8 23:22 33:6, 19 34:11 58:18 illegitimate ^[4] 98:22,24 99:6,6 impact ^[3] 91:9,13 104:23 implausible ^[1] 69:4 implication ^[2] 71:6,19 important ^[4] 39:19 60:20 96:12,13 importantly ^[1] 93:24 imposed ^[1] 17:11 imposing ^[1] 16:1 Improvement ^[2] 7:9 35:9 Incidentally ^[1] 85:3 include ^[16] 7:13 20:16 24:24 31:16,20,20,21 45:5,8 57:1 68:21 69:9 89:12 102:15 103:1 104:24 included ^[7] 23:10 24:10 36:21 51:7 58:2 59:9 78:21 includes ^[7] 24:3 26:4 71:25 83:23 96:3 102:10,22 including ^[7] 5:11 7:14 11:2 48:13 80:25 103:13 104:8 income ^[77] 5:10,12,15 6:10,13,17 7:10 8:13,18,22 10:4,7 15:19 16:17 19:2,7 24:14,25 25:4 27:1,5 28:24 36:1,12 37:23 40:19 43:2,5,7 46:3 49:24 50:3,5,16 52:1,15 62:7 66:9,13,15</p>
--	--	---	--	--

Official - Subject to Final Review

<p>70:25 71:14 72:1 74:12 75:9 79:25 82:2,7,15,25 83:12,20,25 86:16 94:8,11,19 96:4,10,18 100:10,15 102:7,9,10,11,14,21,22,25 103:1,7,12,20 104:19 105:14,18</p> <p>incorporate [1] 90:9</p> <p>incorporated [2] 7:4,6</p> <p>incorporates [1] 41:5</p> <p>increase [2] 71:8 97:19</p> <p>increasing [1] 16:18</p> <p>incredibly [1] 56:18</p> <p>incur [4] 25:3 37:20 38:8 58:1</p> <p>incurred [2] 38:9 42:21</p> <p>incurs [1] 26:13</p> <p>independent [1] 9:19</p> <p>independently [3] 6:5 44:10 102:3</p> <p>Indian [36] 4:11,12 7:8 14:5,7 15:8 17:5 21:5 26:4 27:14,22 30:14,24,24 32:14 35:8 53:25 54:12 56:14,15 58:19,25 60:15,21 70:15 76:7 81:8,11,18 82:13,14 86:3 91:6,10,13 96:13</p> <p>Indians [15] 18:14,21 19:8 31:10 49:20 50:4 52:3,17,19 54:23 56:11,21 60:16 86:2 102:11</p> <p>indicated [2] 13:24 86:19</p> <p>indirect [5] 42:19 73:14 96:7,24 97:2</p> <p>indisputably [1] 84:5</p> <p>Individual [1] 76:22</p> <p>inference [1] 71:11</p> <p>information [5] 17:19 90:19 103:9,11,16</p> <p>inquiry [1] 99:7</p> <p>inside [2] 92:2,3</p> <p>instance [12] 8:23 9:8,8 11:5 13:1 25:15 29:9 38:24 39:8 42:7 53:17 94:16</p> <p>instances [1] 100:3</p> <p>instead [1] 71:18</p> <p>instructing [1] 5:12</p> <p>insurance [4] 49:10,22 50:14 77:17</p> <p>insurers [2] 69:25 97:15</p> <p>intend [1] 100:7</p> <p>intended [1] 5:15</p> <p>interest [1] 41:11</p> <p>interested [2] 19:25 34:22</p> <p>interesting [1] 79:6</p> <p>interests [1] 60:5</p> <p>Interior [2] 91:7,8</p> <p>interpret [2] 12:22 47:23</p> <p>interpretation [6] 9:5 20:11 30:10 41:24 69:10 99:25</p> <p>interpreting [1] 81:7</p> <p>interpretive [1] 32:10</p> <p>introduced [1] 69:7</p> <p>invented [1] 82:8</p>	<p>invoked [1] 100:3</p> <p>involving [1] 99:25</p> <p>ISDA [17] 4:20,25 5:10 6:2 7:3 22:10,24,25 35:8,11 40:13 43:3,25 60:17 101:16 105:10,11</p> <p>ISDA's [3] 4:15 5:7,17</p> <p>isn't [4] 15:20 41:23 74:6 95:17</p> <p>issue [16] 6:6 17:21,21 28:2 35:1 48:9 51:16 61:5 63:12 69:21 71:22 77:23 78:2 84:16,25 102:24</p> <p>itself [14] 24:20 25:10 28:25 37:8,8 46:23 47:3,21 53:7,23 54:9 86:9 89:1 95:16</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>JA [3] 29:11,20 79:11</p> <p>JACKSON [25] 30:9 31:2 40:2,3,20 41:9,18,21 42:8 46:16,18 79:3,4,11,17,20 80:1,7,10,14 92:16,21,23 93:2 100:25</p> <p>Jackson's [1] 80:24</p> <p>Jamestown [1] 85:1</p> <p>January [1] 83:4</p> <p>joined [1] 71:20</p> <p>Joint [1] 79:7</p> <p>judgment [1] 91:24</p> <p>judgments [2] 65:18 104:25</p> <p>judicial [1] 69:13</p> <p>Justice [298] 2:3 4:3,9 6:9,12,19,24 7:19,20,25 8:11 9:2,12 10:14,18 11:6,8 12:8,10,19,24 13:2,10,17,20 14:4,7,10,13,20,23 15:13,20 16:5,8,24 17:15,20 18:4,6,22 19:10,13,16,19,20,22,23 21:10 22:14,16 23:2,4,6,16,21 24:22 25:2,25 26:1,11,17,20 27:11,19 28:14,16,17,19 30:9 31:2,17,24,25 32:2,3,4,5,8,15,22,24,24 33:1,2,23 34:7,12,16,19,21 35:4 36:7,15,16,16,18,24 37:5,12 38:1,14,16,25 39:18,25 40:1,1,3,20,22 41:9,18,21 42:8,9,14 44:6,13 45:2 46:14,15,16,18 47:22 49:14 50:7,9,18 51:19 52:20,21,23 53:21 54:3,5,15,16,20 55:4,10,14 56:2,4,9,24 57:10,11,24 59:6,7,14 60:8,23 61:11,14,21,24 62:1,3,4,5,13 63:4,17,21 64:2,10 65:3,9,22 66:3,18,19,19,21,22,23 67:4,6,11,14,18 68:4,9,12,19,24 69:6,18,19 70:9,22 72:3,9,10,10,12 73:5,9,12,16,20 74:3,18,24 75:4,7,18 76:1,11 77:2,7,10,</p>	<p>18 78:4,19,23 79:1,2,2,4,11,17,20 80:1,7,8,10,14,15,18,21,23 84:3,7,13 85:7 86:5,7,10,23 87:1,4,7,8 88:7,11,12,19 89:8,10,11,14,15 90:5 91:15,17 92:6,11,16,21,23 93:2,5,10,25 94:3,18,22 95:7,14 97:9,11,21,24 98:2,4,14,16,17,18 99:3,5,18,20,24 100:13,18,20,20,22,23,24,25 101:3,8 106:6</p> <p>Justice's [1] 9:17</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>KAGAN [17] 9:12 10:14,18 11:6,8 18:4,6,22 49:14 50:9 51:19 54:15 57:11 66:21 93:5,10,25</p> <p>KAVANAUGH [42] 17:20 19:10,13,16 28:14,16 33:1,2,23 34:7,12,16,19 36:7,15 40:23 57:10 59:6 60:23 61:11,14,21 69:19 70:9,22 72:3,9 84:13 86:5,7,23 87:1,4,7 88:7,12,19 89:15 90:5 91:15,17 100:23</p> <p>Kavanaugh's [1] 46:15</p> <p>keep [4] 11:10,11 33:16 87:12</p> <p>keeps [1] 73:6</p> <p>kept [1] 37:2</p> <p>key [1] 100:16</p> <p>kind [14] 11:19 17:25 19:6 24:11 25:22,24 36:20 63:13 89:17 101:23 102:6,9,20 103:1</p> <p>kinds [4] 14:2 28:11 102:15 103:6</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>laboratory [1] 57:3</p> <p>laid [4] 27:20 31:22 53:6 54:9</p> <p>language [11] 22:11 29:8,18,25 30:23 41:5,16 47:24 52:25 53:20 69:2</p> <p>larger [1] 66:12</p> <p>last [12] 12:12,15,19 13:15 17:1 32:6 35:7 40:6,12 63:4 67:15 86:11</p> <p>later [2] 25:11,20</p> <p>Laughter [1] 60:12</p> <p>law [5] 6:4 7:13 30:24 31:15 101:14</p> <p>laws [1] 36:13</p> <p>lawsuits [2] 63:2,16</p> <p>lawyers [2] 37:8,9</p> <p>lead [1] 19:3</p> <p>learned [1] 90:22</p> <p>lease [2] 85:20,23</p> <p>leasing [5] 84:21,24 85:3,19 86:1</p> <p>least [6] 19:17 28:2 47:14 48:2 54:11 102:24</p>	<p>left [1] 62:15</p> <p>legal [1] 37:6</p> <p>legislative [1] 35:13</p> <p>lend [1] 53:23</p> <p>less [5] 9:18 48:23 61:2,18 67:23</p> <p>level [4] 4:20 8:15 20:8 81:25</p> <p>leverage [1] 8:24</p> <p>liberal [2] 31:4 59:22</p> <p>liberally [3] 30:13 31:8 59:25</p> <p>lifted [1] 67:25</p> <p>light [2] 41:1 81:8</p> <p>limit [3] 17:5 18:13 19:6</p> <p>limitation [9] 6:20 7:16 10:12 16:1 20:2 51:21 80:10 85:2,5</p> <p>limitations [4] 6:9 63:18 64:24 105:1</p> <p>limited [12] 7:17 14:14 15:6,18 21:25 24:16 57:6 61:17 95:18,19 98:9 106:1</p> <p>limiting [1] 84:11</p> <p>line [2] 89:9 99:6</p> <p>lines [1] 27:9</p> <p>literally [2] 45:13 71:12</p> <p>litigated [7] 51:9 55:2,5,21 78:3 84:18,25</p> <p>litigation [1] 68:3</p> <p>litigations [1] 65:5</p> <p>little [4] 48:15 53:13 79:23 90:8</p> <p>lives [1] 48:25</p> <p>LLOYD [4] 2:7 3:9 62:15 80:19</p> <p>locally [1] 96:22</p> <p>logically [1] 90:2</p> <p>long [4] 49:5 55:16,16 89:9</p> <p>look [9] 11:23 26:7 38:6 45:5 54:8 71:19 99:1 103:17,19</p> <p>looking [7] 30:12 31:20,20 79:7,11 89:17 90:16</p> <p>lose [1] 70:10</p> <p>lost [1] 96:9</p> <p>lot [10] 12:11,13 17:15 19:24 40:21 68:3 76:4 83:1,2 101:10</p> <p>lots [3] 44:20 52:8,8</p> <p>lower [2] 16:14 17:22</p> <p>luxury [1] 20:7</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>m(1) [15] 7:6 13:23 15:22 17:5 27:13 41:6 46:1,19,21 82:5,6 83:11 105:4,15,23</p> <p>m(2) [1] 70:6</p> <p>made [7] 28:5 35:16 48:17 51:25 62:8 65:14 103:18</p> <p>maintain [1] 81:21</p> <p>maintenance [1] 87:19</p> <p>major [1] 81:1</p>	<p>man [1] 90:14</p> <p>mandate [1] 30:20</p> <p>mandatory [4] 33:25 34:4 84:20,21</p> <p>Manual [1] 58:19</p> <p>many [6] 20:12 56:13 62:7,16,18 85:21</p> <p>March [1] 1:19</p> <p>massive [1] 56:15</p> <p>master [1] 83:6</p> <p>mastodon [1] 66:4</p> <p>mathematical [1] 8:7</p> <p>mathematics [1] 61:20</p> <p>matter [4] 1:21 41:10 58:21 79:24</p> <p>maximize [1] 81:21</p> <p>mean [41] 9:3,13 10:19 11:6 16:16 19:13 22:20 30:19 37:2 39:22 41:22 46:24 47:23 48:1 51:10 54:20 57:19 58:6 59:15 61:2,7,9,23 64:13,22 65:1,4,5,6,8,12 66:8 67:22 73:5 79:22 82:20 85:12 97:12,18 100:2,4</p> <p>meaning [2] 35:24 40:16</p> <p>means [10] 12:16 22:21 43:8 52:25 53:13 54:18 55:11,21 58:13 100:1</p> <p>measure [2] 46:25 76:21</p> <p>mechanism [1] 85:18</p> <p>Medicaid [17] 9:4,24 10:10,21 11:4,9 12:25 13:6 20:15,22 23:13,20 43:21 70:7 97:15 98:7,12</p> <p>medical [6] 52:6 54:23 57:2,3 81:16 97:24</p> <p>Medicare [18] 9:3,24 10:10,20 11:4,9 12:25 13:6 20:15,23 23:13,20 43:20 69:24 70:7 97:14 98:7,11</p> <p>meet [1] 42:25</p> <p>members [11] 7:15 20:9 48:6 50:24,24 54:22 60:17,17 84:10 85:9,10</p> <p>mental [1] 57:2</p> <p>mentioned [1] 70:23</p> <p>mere [1] 5:20</p> <p>methodology [2] 58:8,19</p> <p>might [8] 6:6 40:23 69:9 76:9,22 77:2 79:22 98:25</p> <p>miles [2] 81:14,15</p> <p>MILLER [53] 2:7 3:9 57:20 80:17,18,19,21 84:5,12 85:11 86:6,18,24 87:3,6,13 88:9,16,21 89:10,13 90:4,9 91:16,25 92:8,13,19,22,24 93:4,7,12 94:2,13,21 95:4,8,15 97:10,17,23 98:3,6,23 99:4,12,19,21 100:6,14,19 101:2</p> <p>million [25] 17:13 33:3 68:8,10,12 81:14 89:3 90:24 92:8 93:6 96:17,25,25 97:1,3,6,7 99:22 103:24 104:2,</p>
--	---	--	---	--

Official - Subject to Final Review

3,7,11,17,19 mindful ^[1] 90:21 minimal ^[1] 20:8 minimum ^[1] 26:24 minus ^[1] 77:24 mistake ^[1] 65:14 mixing ^[1] 59:3 Mm-hmm ^[5] 32:7 36:23 37:4 76:11 78:19 model ^[6] 7:5 29:7,18 35:19 41:5 53:8 moderate ^[1] 81:25 modifier ^[2] 53:5 54:10 modifies ^[1] 80:4 modify ^[1] 79:23 moment ^[1] 96:15 Monday ^[1] 1:19 money ^[74] 8:3 10:10,22 11:20 16:11 20:6 23:17 24:6 25:21 26:3,13 37:21 38:24 46:5,8 47:19 49:18,23 50:2,4,15 55:22 56:5,8,10 58:15 59:4,18 61:18 62:15 63:7 65:13,18 68:5 69:3,23 70:1,7,12,13,14,17 71:3 74:16,17 75:12,14 76:7,22,24 77:1,13 78:10,13 80:6 84:1,2,9 86:8,9,22 88:4 89:22,23 92:6 96:21 97:18,19,20 98:7,10,11 101:21,21 monies ^[3] 11:9,11 67:16 Montana ^[1] 31:12 morning ^[1] 4:4 most ^[4] 39:18 73:14 79:6 93:24 motion ^[1] 81:1 motivation ^[1] 22:2 mouse ^[2] 66:5,8 Ms ^[88] 4:6,9 6:11,14,21 7:2,24 8:5,12 9:7,20 10:16,23 11:7,13 12:9,15,21,25 13:8,14,18 14:3,6,9,12,18,21 15:12,15,25 16:7,13 17:9,18,22 18:5,16,24 19:12,15,18 21:2,17 22:19 23:3,15,18 24:7 25:1,7 26:6,16,18 27:8,18,21 28:15,19 30:22 31:6,19 32:7,13,20 33:6 34:2,9,14,18 35:5 36:10,23 37:4,11,25 38:11,15,19 39:5,22 40:7 41:3,14,20 42:2 101:3,7 much ^[15] 16:20 17:19 46:7 56:4 57:13 65:13 67:23 68:4,17 69:14 70:24 92:6 98:22 103:12,19 Museum ^[1] 91:6 must ^[3] 45:22 46:4 93:19 myself ^[1] 100:7 <hr/> N <hr/> narrow ^[1] 61:24 narrower ^[2] 54:2,6 Nation ^[1] 62:22	National ^[2] 60:15,15 nationwide ^[1] 17:12 Native ^[1] 56:19 natural ^[1] 91:4 nature ^[1] 41:2 Navajo ^[2] 62:23 68:2 nearly ^[1] 103:24 necessarily ^[4] 61:2 64:25 89:24 91:22 necessary ^[2] 55:24 90:3 need ^[2] 30:17 44:10 needs ^[3] 73:21 84:23 88:5 negative ^[3] 71:18 83:1,3 never ^[4] 50:4 55:1,2,20 new ^[8] 10:1,2 25:21,22 82:18 87:20,25 88:25 next ^[2] 30:1 90:15 nice ^[1] 60:8 nobody ^[1] 36:3 Non ^[2] 48:20 50:23 non-beneficiaries ^[14] 18:19 28:6 46:13 48:9,14,19,21 49:13 84:18 85:14,22 99:16 102:10 103:14 non-Indian ^[7] 15:8 16:11 17:25 48:25 49:21 77:4,13 non-Indians ^[13] 9:10,15 14:11 15:1 50:12,17 51:7,14 52:16 56:16 68:25 94:1 102:23 non-ISDA ^[1] 60:17 non-Medicare ^[1] 10:16 non-tribal ^[3] 50:24 84:10 85:9 none ^[3] 32:18 49:11 91:10 noneligible ^[1] 9:11 Nor ^[2] 56:14 74:6 normal ^[2] 93:23,23 normally ^[2] 37:20 38:4 NORTHERN ^[16] 1:14 18:25 27:4 28:4 29:9 43:13 48:16,18,20,22,24 49:1 51:1 52:5 63:9 102:12 notable ^[1] 60:14 note ^[1] 85:17 noted ^[1] 86:11 nothing ^[1] 43:22 notice ^[1] 69:13 noticed ^[1] 36:3 notwithstanding ^[2] 6:4 101:14 nowhere ^[2] 64:9 65:20 number ^[10] 46:11 48:23 65:19 69:5 99:8,11,13,14,18,19 number's ^[1] 33:5 numbers ^[4] 64:8,10,13,15 nurse ^[1] 48:25 nursing ^[1] 57:2 <hr/> O <hr/> Obamacare ^[1] 12:13 objectives ^[1] 105:21 obligated ^[2] 27:15 29:12	obligates ^[2] 4:20,25 obligation ^[14] 5:19 11:25 13:11 16:3 24:20 29:15 33:7 41:7 43:8 46:21 55:18 67:16 84:17 102:8 obligations ^[3] 12:14 47:9 75:2 obliged ^[1] 27:13 obtain ^[1] 50:5 obviously ^[2] 26:14 67:18 occasionally ^[1] 66:12 offer ^[2] 52:15 59:21 offered ^[2] 8:8 53:17 office ^[1] 64:8 often ^[1] 48:15 Okay ^[35] 13:17,20 14:13 16:5 23:2,16 26:17 34:17,20 37:12 38:1 39:25 48:12 49:11 51:23 52:3,16 53:3 54:5 60:11 67:7,11 70:22 72:12 73:12,16,19 74:2,3,18 78:23 79:1 87:2 95:7,14 old ^[3] 56:12 82:18 83:2 OMB ^[1] 82:10 once ^[6] 13:10,11,11 27:24 85:4,4 one ^[34] 5:11 14:16 18:8 22:7 28:2,3 30:4 39:13 47:13 48:2 53:5,14 54:13 58:25 59:15,15 61:18 62:18 67:1,7 68:9 72:8,13 75:10 77:16 79:13 83:11 84:11 85:6 92:8 96:21,25 104:3 105:2 one-third ^[1] 20:4 ones ^[2] 13:2 97:13 only ^[14] 6:1 15:19 20:25 28:3 48:21 52:3 57:15,17 70:14 75:22 84:20 86:2 96:6 97:13 open ^[2] 18:2 53:15 open-ended ^[3] 7:16 21:9 46:22 operating ^[1] 56:12 operation ^[5] 24:18,19 38:10 42:22 71:24 operations ^[1] 95:9 OPM ^[2] 73:2,23 opportunity ^[1] 41:12 optometry ^[1] 57:5 oral ^[7] 1:21 3:2,5,8 4:7 42:12 80:19 ordering ^[1] 45:5 organization ^[1] 45:23 organizations ^[2] 60:14,19 other ^[34] 5:11 6:4 9:11,15,23 10:5 11:2,16 14:1 19:25 20:17 22:4,24,24 28:1 30:7 33:19 34:1 35:3 39:23 48:2 49:6 51:11 54:13 58:22 61:3,15,19 64:22 89:24 101:14 102:19 104:1 105:24	others ^[2] 48:15 50:24 otherwise ^[7] 4:17 6:7 7:12 24:17 35:24 101:24 105:20 out ^[30] 4:14 12:4 18:12 22:17 27:20 31:23 34:1 41:15 43:6 45:1,23 53:6 54:9 56:12 63:6 64:8 65:10,20 70:16 74:10 75:1 77:21 78:2 82:1,3 84:13 89:19 95:9 96:9 97:3 out-of-pocket ^[2] 49:9,21 outlier ^[1] 66:17 outpatient ^[2] 52:6 57:1 outset ^[1] 101:10 outside ^[4] 6:10 37:9 39:20 40:4 over ^[4] 16:22,25 25:17 44:21 overall ^[2] 35:3 90:7 overhead ^[30] 24:9 25:3 26:5,13 38:21 58:16,17 70:16 73:13 74:9 77:19 83:16 85:6,13 86:16 88:12,13,14,17,22 89:4,12 94:14 95:10,16 96:1 97:8,15,17 99:15 overlapping ^[1] 78:6 overtake ^[2] 16:22 104:13 overtime ^[2] 93:15,17 owed ^[1] 104:6 own ^[10] 8:16 9:9 20:5 31:4 49:10,22 50:14 77:16 88:24 96:19 <hr/> P <hr/> PAGE ^[8] 3:2 26:23 27:3 51:20 68:13 80:24 81:18 95:21 pages ^[1] 27:20 paid ^[7] 15:5 26:14 49:8 73:25 97:22 98:6 104:9 pantribal ^[1] 60:14 parade ^[1] 16:10 parse ^[2] 77:20 78:2 part ^[25] 7:1 13:5 24:1,15 35:8,8 39:16,19,22 40:13 46:10 48:11 53:8 72:24 74:23 83:21 84:5 86:1 91:25 94:9 97:9 100:11,15 104:14,20 partially ^[1] 99:14 participating ^[1] 30:14 particular ^[10] 14:2,15 15:13 17:6 34:10 41:16 60:3 76:9,17 100:4 parties ^[4] 5:3 13:13 24:15 94:5 partly ^[2] 97:11,16 parts ^[1] 30:7 party ^[1] 20:15 passed ^[1] 34:24 pay ^[16] 11:25 21:21 40:15 41:7 49:9,21 50:13 59:8 70:14 74:10 77:16 84:24	89:16 93:15 98:12 101:15 payer ^[4] 12:12,15,19 13:15 paying ^[5] 6:5 16:21 44:22 74:6 93:17 payment ^[1] 102:2 payments ^[2] 26:3 97:14 payor ^[6] 35:7 40:6,12,15 63:3 67:15 payors ^[2] 17:1 69:24 payroll ^[1] 73:25 pays ^[2] 5:16 89:2 penalty ^[1] 8:10 penny ^[3] 27:5 50:3 51:25 pensions ^[1] 74:1 people ^[2] 64:14,14 per ^[4] 17:13 33:8,9 103:13 percent ^[12] 33:19 48:23 56:22 57:9 75:10 77:12 85:23 96:8,9,10,18,24 percentage ^[2] 8:3 51:2 perfectly ^[1] 69:15 perform ^[4] 12:7 29:16 75:2 101:18 performance ^[1] 29:12 Perhaps ^[4] 19:12 28:21 68:20 90:7 period ^[2] 25:13 101:23 permission ^[1] 88:5 permits ^[2] 105:23,24 person ^[1] 73:22 person's ^[1] 49:22 personnel ^[1] 93:15 perspective ^[1] 64:9 Petitioners ^[7] 1:5,12 2:4 3:4,13 4:8 101:6 pharmacy ^[1] 57:4 Phoenix ^[1] 81:16 phrase ^[1] 29:2 phrased ^[1] 31:11 phrasing ^[1] 31:14 physical ^[1] 57:4 pieces ^[1] 90:21 pivotal ^[1] 82:4 place ^[1] 87:24 plausibility ^[1] 65:24 please ^[3] 4:10 42:15 80:22 plug ^[1] 4:22 Plus ^[1] 67:21 pocket ^[1] 74:10 point ^[12] 21:3 22:6 23:25 32:6 34:21 38:6 45:14 54:13 63:3 68:9 76:14 105:2 pointed ^[2] 22:16 84:13 pointing ^[1] 29:1 points ^[1] 101:8 policy ^[3] 49:10,22 50:14 poor ^[1] 56:18 population ^[1] 56:18 portion ^[1] 51:6 posing ^[1] 87:9 position ^[8] 15:16 45:18 61:15 64:17 72:8,13 79:12 94:7
--	--	---	--	--

Official - Subject to Final Review

<p>positive ^[1] 82:24</p> <p>possibility ^[1] 41:25</p> <p>possible ^[3] 18:11 76:9 77:25</p> <p>pot ^[6] 61:17 69:23 70:1,12,14,16</p> <p>potential ^[1] 41:1</p> <p>potentially ^[3] 5:17 49:5 102:21</p> <p>practical ^[4] 55:3 58:20 59:16 79:24</p> <p>precludes ^[1] 40:25</p> <p>predict ^[4] 65:2,5 91:9 92:5</p> <p>prediction ^[1] 104:12</p> <p>predictive ^[1] 91:23</p> <p>premised ^[1] 68:20</p> <p>prepared ^[1] 27:4</p> <p>presence ^[1] 7:14</p> <p>presented ^[1] 84:14</p> <p>pressure ^[2] 49:3 77:15</p> <p>presumably ^[4] 9:16 10:19,21 85:8</p> <p>pretty ^[2] 52:5 57:12</p> <p>prevail ^[2] 45:14 61:1</p> <p>prevention ^[1] 92:14</p> <p>previously ^[3] 4:14 25:23 70:11</p> <p>primarily ^[3] 48:5 50:23 84:9</p> <p>primary ^[4] 5:21 16:23 57:2 58:5</p> <p>principle ^[3] 50:19 69:17 84:10</p> <p>principles ^[1] 32:11</p> <p>prioritization ^[1] 11:14</p> <p>prioritize ^[1] 11:1</p> <p>private ^[1] 97:15</p> <p>probably ^[1] 54:25</p> <p>problem ^[6] 14:24 19:5 35:3 42:1,5,6</p> <p>proceeds ^[2] 9:25,25</p> <p>process ^[1] 91:23</p> <p>procure ^[1] 89:5</p> <p>produce ^[1] 104:18</p> <p>produced ^[1] 22:21</p> <p>professions ^[1] 7:15</p> <p>program ^[96] 4:17 8:17 10:11,12 11:2,12 12:1,2,3,18 17:12 19:2 24:19 25:23 26:9,25 27:5 28:22 29:2,4,5 30:2,3 36:5 37:15 38:10 39:7,16,21 40:4,8,10,17 42:23 43:1,5,7 46:3 48:22,24 49:24 50:2,5,16 51:25 52:15 54:22 59:10 62:7 66:9,12 71:14,25 72:1,1 74:11,15,16 77:14 79:24 80:25 81:5,17,20,24 82:1,2,2,7,15,23,25 83:12,20,22,23,24 84:6,23 86:3 87:16 93:23 94:16 95:5,10,16 96:4,10,17,18,18 97:4 100:10,14 102:13 106:1</p>	<p>programs ^[15] 4:14 8:24 9:9,22 10:4 15:1 28:25 29:23 52:11 74:11 80:25 81:4,9,10 92:15</p> <p>prohibiting ^[1] 83:7</p> <p>prohibition ^[5] 6:3 21:20,24 22:7 101:13</p> <p>prohibitions ^[1] 21:19</p> <p>projections ^[1] 90:14</p> <p>promise ^[1] 4:19</p> <p>promising ^[1] 30:5</p> <p>promote ^[4] 47:4,5,5 76:15</p> <p>promoting ^[1] 44:1</p> <p>prompted ^[1] 35:1</p> <p>proof ^[1] 91:16</p> <p>properly ^[1] 17:5</p> <p>proposed ^[2] 83:4,8</p> <p>prove ^[1] 27:4</p> <p>provide ^[16] 4:19 8:14 14:1,16 15:11 21:13 27:17 37:7 56:10 57:12 82:16 89:25 90:18 93:11,25 96:22</p> <p>provided ^[8] 15:24,24 17:10 19:8 24:18 25:14 51:13,14</p> <p>provider ^[1] 43:21</p> <p>provides ^[2] 61:3 90:1</p> <p>providing ^[13] 7:17 18:14 20:14,22,23 25:9,18 33:20 39:6,11 56:15 57:15 94:16</p> <p>provision ^[34] 6:4,18 7:6,7,8 12:16,23 13:9,15 29:17 30:1,13 31:5 35:7,12 40:9,12 47:7,20,25 48:4 49:12 51:12 55:8 59:22 63:4 70:24 71:20 82:24 100:16 101:14 105:17,19,24</p> <p>provisions ^[10] 5:8,11 11:24 30:19 58:24 59:24 72:2 83:1,3 101:11</p> <p>proviso ^[2] 45:10,11</p> <p>purpose ^[19] 7:12 10:7 14:5 15:7 29:21 47:4,6,7,12,15,20,25 52:18 53:11,12 54:8,8 77:10 105:20</p> <p>purposes ^[42] 6:22 7:13 13:24 15:21,23 26:8 27:14 39:4,19 43:9,25 45:7 47:1,13,15 53:1,3,6,9,15,24 54:11,24 55:8,11,21 56:20 57:1,23 68:21 75:16,21 76:5 79:5,9,22,23 80:4,4 83:13 87:15 105:5</p> <p>pursuant ^[4] 42:23 43:10,19 55:18</p> <p>put ^[7] 10:21 33:4 52:20,23 75:15 82:19,20</p> <p>putting ^[1] 73:24</p>	<p>quibble ^[1] 70:4</p> <p>quickly ^[1] 46:19</p>	<p>R</p> <p>radiology ^[2] 52:7 57:4</p> <p>raft ^[1] 83:8</p> <p>raise ^[1] 26:23</p> <p>raised ^[12] 14:25 19:9,10,14 21:3 35:4 36:8,14 49:25 51:3 63:5 77:23</p> <p>Ramah ^[3] 62:23 68:2 91:14</p> <p>rate ^[4] 66:14 96:7,8,24</p> <p>rather ^[2] 5:2 11:3</p> <p>read ^[5] 7:7 17:5 47:2 105:16,22</p> <p>reading ^[4] 13:15 63:23 65:23,25</p> <p>ready ^[1] 18:12</p> <p>real ^[1] 33:18</p> <p>real-world ^[2] 87:9,10</p> <p>realistically ^[1] 49:10</p> <p>realize ^[1] 47:15</p> <p>really ^[14] 10:14 36:19 37:14 41:24 46:19 47:14 52:4 56:14 58:21 63:5,14 66:8 92:5 96:12</p> <p>rearranges ^[1] 95:22</p> <p>reason ^[9] 5:24 33:13 55:3,9,20 77:3 89:16 94:24 103:16</p> <p>reasonable ^[2] 45:22 91:18</p> <p>reasonableness ^[3] 85:2,3,5</p> <p>reasons ^[1] 40:8</p> <p>REBUTTAL ^[3] 3:11 101:3,5</p> <p>receipt ^[1] 36:1</p> <p>receive ^[2] 5:2 52:1</p> <p>received ^[2] 104:10,16</p> <p>receives ^[2] 21:25 98:11</p> <p>receiving ^[3] 45:7 89:24 101:19</p> <p>reconstructing ^[1] 87:25</p> <p>record ^[5] 64:6 65:19 68:17 69:7 99:9</p> <p>recover ^[3] 42:17 62:20 71:23</p> <p>recoverable ^[3] 20:12 26:25 42:21</p> <p>recovery ^[2] 43:16 93:7</p> <p>recurring ^[1] 92:25</p> <p>reduce ^[1] 93:24</p>	<p>reduced ^[1] 71:4</p> <p>reducing ^[1] 70:25</p> <p>refer ^[1] 28:4</p> <p>reference ^[2] 31:3 90:10</p> <p>referencing ^[2] 8:7 21:20</p> <p>referring ^[1] 30:3</p> <p>refers ^[2] 30:2 51:20</p> <p>reflects ^[1] 76:15</p> <p>refute ^[1] 5:5</p> <p>regard ^[2] 81:10 96:5</p> <p>regulations ^[3] 82:11 83:3,9</p> <p>reimburse ^[2] 6:1 22:9</p> <p>reimbursed ^[5] 9:6 20:20 21:14 59:10 97:8</p> <p>reimbursement ^[27] 6:16 7:10 8:13,22 15:18 16:4,17 17:24 19:2,7 20:25 22:15 26:9 28:12 36:12 40:19 48:7 66:14 102:6,15,21 103:7,12,19 104:19 105:13,18</p> <p>reimbursements ^[1] 101:20</p> <p>reimbursing ^[1] 85:16</p> <p>reinvest ^[1] 10:10</p> <p>relate ^[1] 83:15</p> <p>related ^[3] 29:22 36:19 54:11</p> <p>relationship ^[1] 35:25</p> <p>relevant ^[1] 63:14</p> <p>reliable ^[1] 103:11</p> <p>rely ^[2] 37:10 82:5</p> <p>remain ^[1] 60:4</p> <p>renegotiate ^[1] 41:13</p> <p>renegotiated ^[1] 93:3</p> <p>renegotiation ^[1] 40:25</p> <p>repercussions ^[1] 103:4</p> <p>reply ^[1] 31:23</p> <p>representation ^[1] 78:16</p> <p>represented ^[1] 62:14</p> <p>representing ^[1] 18:25</p> <p>represents ^[1] 64:17</p> <p>require ^[2] 12:23 83:15</p> <p>required ^[8] 15:5 20:25 41:16 75:11,14 82:15 97:2 98:8</p> <p>requirement ^[2] 10:9 11:1</p> <p>requires ^[12] 4:12 13:9 20:18 22:15 29:13 40:5 47:12 54:10 58:9 63:10 65:7 83:20</p> <p>reservation ^[2] 49:1 56:17</p> <p>reservations ^[1] 56:11</p> <p>reserve ^[2] 51:17 102:24</p> <p>resolution ^[1] 28:5</p> <p>resolved ^[1] 31:9</p> <p>resort ^[10] 12:12,15,20 13:15 17:1 35:7 40:6,12 63:4 67:15</p> <p>resources ^[3] 44:2 73:3 91:4</p> <p>respect ^[5] 66:24 74:11 84:17 85:11 94:14</p>	<p>respectfully ^[2] 8:5 66:2</p> <p>respond ^[4] 21:3,17 59:19 71:9</p> <p>Respondent ^[8] 1:8,15 2:6,8 3:7,10 42:13 80:20</p> <p>response ^[4] 20:1 34:23,25 93:24</p> <p>responses ^[1] 59:21</p> <p>responsibilities ^[1] 8:2</p> <p>responsibility ^[3] 43:4 53:18 89:18</p> <p>responsible ^[1] 85:16</p> <p>result ^[1] 19:3</p> <p>retrospective ^[1] 104:24</p> <p>return ^[1] 25:19</p> <p>revenue ^[8] 5:4,9 17:24 81:3 88:4 96:18 97:4 102:15</p> <p>revenues ^[2] 81:22,25</p> <p>reverse ^[1] 106:4</p> <p>revisit ^[2] 41:9 42:3</p> <p>riders ^[1] 78:11</p> <p>rise ^[1] 41:6</p> <p>risk ^[2] 60:22,23</p> <p>River ^[1] 104:4</p> <p>roadless ^[1] 81:15</p> <p>roads ^[1] 93:20</p> <p>ROBERTS ^[29] 4:3 7:20,25 8:11 9:2 31:17,25 32:24 36:16 40:1 42:9 47:22 50:7,18 62:1 66:19 72:10 79:2 80:15,18 84:3,7 85:7 98:2,4,14 100:20 101:3 106:6</p> <p>Roger ^[1] 87:20</p> <p>roots ^[3] 31:16,16,19</p> <p>roughly ^[1] 68:6</p> <p>route ^[1] 9:19</p> <p>rule ^[2] 18:5 30:10</p> <p>rules ^[1] 33:24</p> <p>ruling ^[1] 43:24</p> <p>run ^[3] 25:23 81:24 84:22</p> <p>running ^[9] 8:16 9:9 28:25 39:7 42:25 73:22 81:20 89:6 96:17</p>
<p>S</p> <p>salaries ^[1] 97:19</p> <p>Salazar ^[3] 61:10 62:23 68:1</p> <p>same ^[33] 4:20 7:10 8:12,14,17 10:22 12:5 24:5 25:13 30:19 31:7,14 39:5 49:4 61:8,15 66:13,14 71:15,21 72:1 74:9 75:4,7,16 77:1 89:22 91:20,22 98:10 101:22 104:10 105:18</p> <p>sample ^[3] 82:13,21 83:2</p> <p>SAN ^[8] 1:7 29:10,19 48:13 79:16 81:12 99:22 104:15</p> <p>satisfied ^[2] 45:25 55:16</p> <p>satisfy ^[9] 44:10,18,25 45:13,19 55:8 72:22 74:21 83:21</p> <p>saw ^[1] 83:19</p> <p>saying ^[17] 8:9 18:11 19:6</p>					

Official - Subject to Final Review

<p>20:13 22:7 24:1,6,23 28: 20 35:16 37:19 38:12 39:9 40:8 52:14 104:6 105:7 says [23] 6:21 7:11 13:23 27:3 29:11,20 30:12 41:15 45:4,6,20 47:7 51:12,13 53:8 59:23 70:24 76:5 79: 22 81:20 83:6 101:15 105: 19 scheme [5] 5:17 21:8 42:4, 7 98:21 schemes [2] 22:4 28:12 scholarship [2] 54:22 98: 13 school [1] 54:23 scope [8] 27:2,7 28:7 46: 22 52:3,4,10,12 sea [2] 5:17 35:11 second [5] 21:20 53:5 60:6 63:3 102:4 secretarial [31] 4:21,23 12: 5,6 16:23 23:11,14,23 24:2, 2,11,16,23 25:10,17 28:23 29:7,16 30:4,6 36:21 46:9 62:21 64:18 66:11 76:13 83:24 94:9 95:1 104:10,13 SECRETARY [12] 1:3,10 24:12,17 25:23 37:20,21 38:8 70:21 74:9 75:5 95: 12 Secretary's [1] 49:11 section [8] 7:5 35:20 40:5 41:20 42:20 43:13,15 51: 12 see [6] 19:17 34:25 35:2 40: 16 41:14 81:5 seeing [2] 103:22 104:1 seek [2] 22:15 59:13 seeking [10] 21:6 66:13 68: 5,8 74:7,17 88:20 92:7 103:24 104:21 seem [7] 15:6 16:12 20:13 47:25 57:12 72:16,17 seems [8] 23:9 37:16 40: 21 44:25 45:12 47:11 72: 14 105:8 seen [1] 19:9 Self-Determination [12] 4: 11 7:23 8:10 30:15 42:16 44:1 47:6 53:7 59:23 60: 20 76:15 96:13 Senate [1] 90:13 sense [1] 31:22 separate [11] 5:10 58:24 59:1 69:21 70:2,12 73:23 78:14 86:20 101:13 105: 11 sequence [1] 44:17 series [1] 20:1 serve [12] 9:10,14 10:13 18: 19 27:24 28:5 48:14,20 49: 17 52:19 55:25 85:22 serves [1] 87:15 Service [18] 4:12 20:22,23</p>	<p>21:1 39:12,13 42:23 58:3, 25 59:18 81:11,16,19 82: 13,14 83:23 91:10 93:13 SERVICES [84] 1:4,11 4: 20 7:18 8:15 14:1,2,15,17, 19 15:5,10,14,23 17:6 18: 13 19:2 20:14,14,17 21:13 25:9,14,18 27:1,16 29:23 30:7 33:20 37:6 39:7 43:2, 7 46:6 48:18 49:19 50:4,6, 13,16,20,22,23 51:6,13 52: 2,6,7,9,16,17 53:10,17,18 55:25 56:15 57:13,16,17 59:1,4 69:9 70:3,15 73:3 75:2 79:25 82:3,16 84:9, 17 85:14 86:2 89:25 90:2 91:14 92:12,13 93:10 94:1 99:16 101:19 105:8 106:2 serving [6] 15:19 27:22 102:10,11,23 103:14 set [6] 28:3 42:6 47:8,9 53: 9 54:21 setting [1] 84:19 severe [1] 65:23 severely [1] 81:17 SG's [1] 64:8 shade [1] 90:7 shall [8] 5:12 29:11 30:13 45:4,8,21 51:13,14 shoes [5] 23:22 75:13,16, 19 77:8 shot [1] 35:23 shouldn't [5] 23:22 28:20, 21 32:9 51:7 shows [1] 11:20 side [3] 48:2 51:11 102:19 side's [1] 20:1 sign [1] 92:25 significant [1] 48:1 significantly [1] 48:10 similar [1] 43:11 simple [2] 4:15 61:19 simpler [2] 53:22,23 simplistic [1] 94:4 simply [1] 53:24 since [2] 36:6 86:13 single [7] 50:3 51:25 55:2 64:24 104:1,2,5 situated [1] 9:23 situation [4] 16:16 84:8 85: 12 96:16 six [5] 63:18 80:24 81:4,9, 10 six-year [2] 64:23 104:25 skeptical [1] 64:15 sleep [1] 87:24 sleeping [1] 87:21 slotting [1] 47:13 smaller [5] 8:3 17:16,18 43: 12 66:12 smuggle [1] 99:8 snowball [1] 16:22 Solicitor [1] 2:2 solution [1] 18:13</p>	<p>solves [1] 19:4 someone [2] 64:7 73:19 sometimes [1] 17:2 somewhere [1] 67:1 son [1] 98:13 sorry [7] 7:19 19:21 31:24 38:15 46:17 79:17 105:4 sort [3] 11:14 35:22 75:24 sorts [1] 48:5 SOTOMAYOR [25] 7:19 19:20,23 21:10 22:14 23:2, 4 31:24 32:4,5,8,15,22 35: 4 57:24 59:7,14 60:8 61: 24 66:20 88:11 89:8,11,14 100:21 sought [1] 43:13 sound [1] 104:14 sounded [1] 18:9 source [2] 96:25 97:1 sources [3] 12:17,22 40:14 sovereignty [1] 60:21 spa [1] 20:7 spas [1] 68:24 speaking [1] 40:13 specific [4] 4:22 13:25 15: 10,23 specifically [6] 10:9 14:14 15:9 71:17,22 82:12 specified [1] 32:17 specter [1] 14:25 speculative [2] 61:9 64:21 spelled [1] 95:9 spend [45] 8:23 10:1 13:22 19:1 22:9 23:17 25:3,11, 20 27:13,15 37:22 43:2,5 46:5,8 47:18 49:18 50:5, 15 52:2,11 70:2,7 75:11,12, 15,18 76:7,9,16 77:5,12,13 78:5 79:21,24 80:5 96:19, 20 97:18,19,20 101:21 105: 19 spending [30] 11:20 24:14 33:17,25 37:21 38:23 39:1, 2 46:3 50:16 56:5 67:19 69:3 75:8 76:21,24 81:3 83:20,23,25 84:9,20,21 90: 14 94:11,20 95:2 96:4,10 106:1 spends [8] 24:6 26:3,13 40: 19 50:3 78:13 83:25 84:1 spent [12] 4:17 20:5 21:21 25:21 27:6 77:4 78:9 79: 13 81:4,6 82:15 96:22 square [2] 30:9 81:14 squarely [1] 22:11 stand [1] 77:8 standard [1] 82:9 standing [2] 23:22 75:19 stands [1] 33:13 start [1] 64:18 started [4] 63:2,6,16 68:3 starting [1] 25:22 statement [1] 48:17 STATES [3] 1:1,23 96:7</p>	<p>statute [30] 5:6,20 8:19,21 23:7 26:7,18 29:19 30:11 32:12,13 59:24 63:1,8,18 64:23 65:7 67:24 70:2,5,5 72:24 76:14 90:8 98:9 100: 1,1,8,9 104:25 statutorily [1] 15:3 statutory [13] 5:5 6:14 29: 1 30:20,23 31:21 39:23 42: 3 47:24 52:25 71:15 87:8, 11 stay [3] 61:8 91:20,22 stays [2] 61:14 89:21 stepping [1] 75:13 still [7] 16:16 20:10 34:13, 14 48:6 54:16 81:8 stop [2] 87:2,4 straightforward [1] 5:24 stream [4] 5:11 59:1 78:14 103:1 streams [2] 30:8 55:23 structure [2] 31:21 90:8 stuff [2] 73:2,24 sub-clause [1] 30:1 subcontract [1] 58:14 subcontractor [2] 58:15, 17 subject [11] 10:8 12:1,3 29: 2,4,24 34:16 40:10,17 62:7 81:2 submitted [3] 60:18 106:8, 10 subsidize [2] 4:25 22:4 substance [1] 92:14 substantial [1] 85:13 sudden [1] 33:14 suffers [1] 93:14 sufficient [2] 80:4 93:14 suggest [1] 91:12 suggesting [3] 27:10 28: 21 35:13 suggests [1] 71:2 suicide [1] 92:14 suit [1] 66:25 suits [1] 65:1 sum [2] 55:23,24 supplemental [2] 5:3,13 supply [1] 17:8 support [60] 4:22 5:8,19,21 11:22,23 15:4,17 16:3,20 18:1 20:11 21:14 24:20,21 26:9,25 29:25 33:7,9,14 34:10 36:11 37:14 38:2 39: 15 41:7 42:18 43:12 45:6 50:20,22 58:3,11 59:13 60: 18 62:20 63:1,11 64:17 66: 10 68:5 71:17,23 75:17,23 77:20 84:19 89:12 94:11 95:23 96:2 99:9 100:16 101:25 102:8 103:6,25 104:7,17 supporting [1] 86:2 supports [1] 20:20 Suppose [3] 54:21,21 85:</p>	<p>25 SUPREME [2] 1:1,22 surely [1] 71:6 surface [1] 36:14 surplusage [2] 44:14,16 system [2] 20:11 81:21</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table [1] 62:16 tag [2] 39:1,6 talks [1] 47:1 tend [1] 64:14 term [3] 46:1,19 81:7 terms [12] 7:25 8:1 11:12 15:4 20:3 41:13 45:24 53: 12 56:25 95:19,20 98:24 tethering [1] 29:15 text [4] 5:5 21:12 45:13 100: 9 thanks [1] 39:25 themselves [2] 11:24 90:1 Theoretically [1] 61:16 theory [4] 5:6,24 16:19 17: 11 therapy [1] 57:4 there's [48] 10:5,11 20:19 23:3,9 29:17 32:18 33:18 40:24 41:9,12,25 44:20 45: 9,10 46:11 47:6 48:25 51: 10,11 52:7,8 55:7 56:4,8,9 58:6,7,24,25 59:1,3 61:17 62:11,17,18 63:13 64:23 66:11 68:14 69:2 74:13 84: 20 85:2,5 92:4 104:4 105: 2 they've [3] 9:19 12:13 27: 16 thinking [3] 31:21 89:20 91:21 thinks [1] 50:1 third [5] 5:3 13:13 20:15 24: 15 75:11 third-party [42] 5:9 6:16 8: 13,18,22 10:4 16:4,17 19:1, 7 20:19 24:25 25:4 26:3 28:24 36:1,12 37:22 39:2 40:19 43:20 69:24 70:25 71:3 75:8,12 78:5 79:13 81:3,22,25 86:16 88:4 94: 8,19 97:14 102:6 103:7,12, 19 104:19 105:13 THOMAS [10] 6:9,12,19,24 32:2 44:6,13 45:2 62:3 98: 16 though [2] 26:1 105:15 thousand [1] 81:15 three [5] 22:24 92:9,19,25 93:1 three-year [3] 92:10,17,20 threshold [1] 38:5 tie [1] 11:24 tied [9] 15:18 16:3 24:20 25: 13,18 47:20 103:8,9 105:7 tiny [1] 51:2</p>
---	--	---	---	--

Official - Subject to Final Review

<p>Title ^[2] 7:3 35:21 today ^[4] 37:18 65:12 99:13 101:10 together ^[1] 101:12 took ^[5] 28:19 37:17 62:21 102:12,18 top ^[1] 97:8 tortfeasors ^[1] 69:25 total ^[4] 33:8 48:23 97:1 104:8 touchstone ^[1] 95:24 towards ^[2] 52:11,17 tradition ^[1] 63:13 training ^[1] 93:22 tranches ^[2] 84:1,2 transfer ^[5] 4:13 29:21 47:8 53:9 58:15 transferred ^[4] 34:4 43:3 52:9 53:19 transfers ^[1] 4:18 transforming ^[1] 5:20 translated ^[1] 58:12 treasury ^[1] 70:20 treated ^[1] 5:12 tribal ^[14] 7:15 20:4,9 43:1 44:1 45:23 48:6 50:24 54:22 60:19 84:22 85:9,21 97:22 TRIBE ^[63] 1:7,14 4:5,18 5:9 6:10 7:21 8:14 14:21 18:14 19:1 21:25 23:22 24:13 27:23 28:5 29:5 30:14 37:23 40:18 43:4,6 46:25 47:10 49:22,24 50:1,14,15 53:10,13 54:21 55:17,22 57:12,14 62:8 64:25 65:21 73:19 74:4,7 76:20 81:12,19 84:1,8,22 86:8 88:3,25 92:15 95:13,18 96:16,23 97:4,6 99:22 101:18 104:5,6 105:11 tribe's ^[4] 4:19 29:10,20 70:19 tribes ^[63] 4:13,24 6:15 7:11 8:8,17,21 9:9,13,14 10:2,3,6,19,25 12:4,11,17,23 14:15 15:11 16:15 17:7,23 23:24 24:1 33:21 35:16 38:8 39:3,12 40:5 41:3 42:17 47:18,24 48:3,13 49:15,17,17 50:10 53:14,19 56:5 59:18 60:2 61:3,15 62:6,14,19,24 63:5,16 67:21,23 76:16 89:24 97:13 103:13 105:19,25 tribes' ^[13] 4:15 5:1,14,24 6:2 11:18 15:16 16:19 17:11 25:24 43:16,18,24 tried ^[1] 36:3 trigger ^[2] 102:7,22 triple ^[1] 35:23 tripling ^[1] 5:18 true ^[8] 49:14,16 50:9,12,12 64:20,23 76:8</p>	<p>trusted ^[1] 82:23 trying ^[3] 89:19 95:1 99:8 turns ^[1] 65:9 twice ^[1] 85:4 two ^[11] 6:14 15:9 21:18 28:11 55:23 58:24 60:14 62:17,21 72:15 95:12 type ^[2] 62:9 74:9 types ^[3] 65:5 76:23,25</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate ^[1] 91:9 umbrella ^[1] 87:16 under ^[47] 5:2,16 7:20,21 9:5 12:12 15:12 17:16 18:14 27:13 29:14 33:10,16 38:3,13,18 42:20 43:13,22 45:8 46:4 51:14 52:1 53:2 55:25 58:18 62:19 63:1 67:24 69:10 70:1,5 72:14 74:8 75:2,12 78:11 82:16 84:20 87:16 93:8 94:8,25 95:18 96:13 105:10,10 underestimate ^[1] 69:20 underfunded ^[1] 81:17 underfunding ^[2] 21:5 35:3 underlying ^[1] 38:23 underserved ^[1] 44:3 understand ^[20] 15:15 20:3,10 21:24 22:2 23:24,25 26:12 27:8 28:9 34:20 35:5,10 37:1 48:10 51:19 54:17 60:24 70:10 80:13 understanding ^[3] 57:22 62:5 68:20 understands ^[1] 55:24 understood ^[6] 18:24 26:1 35:15 94:18 102:16 105:6 undertake ^[3] 7:22 29:6 30:5 undertaking ^[1] 8:1 unexplained ^[3] 68:16 69:5,14 unheard ^[1] 85:24 UNIKOWSKY ^[99] 2:5 3:6 18:7 23:24 26:22 42:11,12,14 44:6,9,15 45:4 46:17,24 48:8 49:16 50:11,25 51:23 53:3 54:1,4,7,19,25 55:6,12,15 56:2,3,7,22 57:8,19 58:5 59:12,20 60:10,13 61:6,13,16 62:10,17 63:20,25 64:4,12 65:4,17 66:1,7 67:2,5,8,13,17,21 68:7,11,15,22 69:1,12 70:4,18 71:10 72:6,20 73:7,11,13,17,21 74:4,19,25 75:6,10,25 76:3,12 77:6,9,11,22 78:8,20,24 79:10,15,19,21 80:2,9,12 86:10,19 89:23 Unikowsky's ^[1] 18:8 unilaterally ^[1] 9:10 unit ^[1] 66:15</p>	<p>UNITED ^[3] 1:1,22 96:7 universe ^[1] 76:2 Unless ^[1] 88:23 until ^[1] 67:10 up ^[23] 25:13,18 30:3 31:4,15 36:12 37:2 42:6 48:10 54:21 55:1 58:21 63:12 85:4 86:12 88:13 90:20,23 91:5 92:25 97:25 98:19 99:8 upend ^[1] 5:6 upending ^[3] 21:8,12,16 upgrade ^[5] 93:18,18,20,21,21 users ^[1] 48:24 uses ^[5] 11:2 22:25 77:14 84:22 105:23 using ^[3] 25:10 43:7 105:13</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>value ^[3] 103:17,22 104:24 varied ^[1] 7:14 vein ^[1] 18:9 versus ^[3] 4:5 62:23 68:2 via ^[1] 7:4 view ^[1] 30:10 viewing ^[1] 45:12 violates ^[1] 5:25 vis-à-vis ^[1] 36:11 visualize ^[1] 81:13</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>walls ^[1] 87:23 wanted ^[7] 11:21 35:10 46:12,12 71:5 86:4,12 wants ^[6] 47:18 49:2 54:21 73:19 98:8 105:11 Washington ^[4] 1:18 2:3,5,7 way ^[26] 9:22 17:2 18:5 21:9,9 24:5 35:11,23 36:5 37:22 39:5,13,14 41:6 45:1 49:20 54:6 63:8 75:4,7 81:24 91:8 92:5 96:6 103:17 105:12 ways ^[3] 8:19,25 9:23 welcome ^[2] 6:8 44:5 whack ^[1] 85:25 whatever ^[3] 39:2 47:18 66:5 whereas ^[1] 10:8 Whereupon ^[1] 106:9 whether ^[9] 25:5 30:17 74:22 86:8 102:5,9,20,25 103:14 who's ^[2] 48:25 89:16 whole ^[5] 76:14 85:23 97:6,7 98:20 will ^[25] 12:6 18:20 49:23 53:17 59:24 61:2,8,15 64:18 69:15 81:20 84:14 85:21,25 89:23 90:11,17,18 91:22 93:5,11 98:22 100:2,3 104:12</p>	<p>willing ^[1] 60:21 wishes ^[1] 51:5 within ^[7] 23:13 27:2 54:24 87:17 102:1 105:3,5 without ^[4] 33:24 69:8 81:25 99:9 wondering ^[1] 40:24 word ^[6] 22:20,25 47:15,16 54:10 72:1 words ^[2] 31:7 95:22 work ^[17] 5:16 27:2,7 28:7 41:11 43:18,22 46:22 52:3,5,10,12 74:14,15 87:19 93:23 101:12 worker ^[1] 38:22 workers' ^[4] 37:3 39:10 73:6,18 works ^[3] 23:8 49:1,20 world ^[1] 18:12 worse ^[1] 7:21 wrote ^[1] 100:15 Wyoming ^[2] 49:6 56:18</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>XAVIER ^[2] 1:3,10</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year ^[19] 17:13 33:8,9 63:23 65:11,11 90:15,16,17 92:9 93:6 96:17 99:23 103:13 104:1,2,3,5,11 years ^[17] 5:7 28:2 34:5,21 52:2 62:8,16,18 63:18 78:8,9,17,18 92:9,20,25 93:1</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Zero ^[1] 85:22</p>
---	--	--	---